

## UDAL RIGHTS.

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1624. March 29. SINCLAIR *against* HAWICK.

A QUESTION anent udal lands, in Orkney, betwixt Lawrence Sinclair and one Hawick, wherein the Lords found, That udal lands behoved to be bruiked by some lawful title, and that naked kindness and possession were not sufficient to possess them. It was perceived, that, in Orkney, they name their lands merk-lands, whereof some will not be worth ten merks by year.

*Haddington MS. v. 2. No. 3115.*

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**No. 1.**  
Udal rights must be held by some lawful title.

1752. July 1.

The EARL of GALLOWAY and Others *against* The EARL of MORTON.

The Earl of Galloway and others, udal men of Orkney, in a declarator raised by them against the Earl of Morton, superior of Orkney, insisted *inter alia*, that it should be found, that the duty called *skat*, anciently payable out of their udal lands in Orkney, ceased from 1667, when the supplies by assessment were introduced, and these their lands became subject to the assessment in common with the rest of the kingdom.

In this declarator they pleaded, That udal and allodial are synonymous terms: That out of allodial lands no feu-duty or rent-service could, in the nature of the thing, be exigible; for that the King was not *dominus directus* or superior in allodial lands: That the duty called *skat*, anciently payable to the Crown out of these lands, was in truth a yearly land-tax or tribute imposed for the support of the State; and consequently that, as the udal lands now paid land-tax according to their valuation, they ought to be exempted from the payment of *skat* or land-tax to the Earl of Morton also

To all which the Earl of Morton made answers, denying both the position itself, and the consequences drawn from it; yet he insisted on this preliminary defence,

**No. 2:**  
Whether payment of cess exempts udalmen from payment of the duty called *skat*?

No. 2. that his right to the skat-duties was secured by prescription, for that these duties had been paid to the Crown for the udal lands of Orkney, from the year 1667 (when the assessment was introduced) down to the year 1707; and from that time, without interruption, to the Earls of Morton, having right to these duties as part and pertinent of the earldom of Orkney.

The Lords gave not judgment on the general point; but, sustaining the preliminary defence,

“ They assoilzied the defender from the conclusion of the declarator with respect to the skat-duties.”

*Act. J. Gordon, Hay, Lockhart. Alt. R. Dundas, Wedderburn & Advocatus. Clerk, Justice.*

*Fac. Coll. No. 21. p. 41.*

See APPENDIX.