1753. *June* 26. INNES of Sandside *contra* SUTHERLAND of Swinzie.

A division of a cumulo valuation of lands being made by a decree of the Commissioners of Supply; and the proprietor of one of the parts valued at L400 Scots, being enrolled at a Michaelmas meeting of freeholders, upon the evidence of the decree: a complaint was made to the Court of Session of the enrolment, upon this, among other grounds,—that the meeting of the Commissioners of Supply which divided the valuation, was not regular, not being the first regular meeting appointed by Act of Parliament, nor an adjournment of such meeting, nor a meeting appointed by the convener. The fact was, that by the Cess Act 1751, the 4th June that year was appointed for the first meeting of the commissioners; but the Act not having come down till after that day was elapsed, the commissioners were convened, *quam primum* afterward, by the sheriff. In support of the objection it was urged, that what passes in the House of Commons is presumed to be known to all the lieges; and that the commissioners had authority to meet the 4th of June, though the printed act was not come down. The Lords made light of this objection. The printed act was deemed the proper legal intimation; and it was reckoned absurd that the neglect of publishing the act should be attended with so violent a consequence as that of freedom from the land-tax; and, therefore, the objection was repelled.

I was not satisfied. The land-tax is a debt which, in all events, ought to be levied; and if it cannot be done in the regular way, another method must be substituted. The extraordinary powers of the Commissioners are to be considered in a different light. No meeting is empowered to split a valuation, but what is regular, in terms of the statute. And if such a meeting cannot be had, there is no such necessity in this case as in the former, to apply a remedy. No loss ensues, save only a year's delay in splitting the valuation.

Select Decisions, No. 45. *page* 52.

1757. *November* 17. Creditors of DUNJOP *contra* HUGH ALISON.

GABRIEL ALISON of Dunjop, *anno* 1697, set his lands of Whitepark to Robert Affleck, for the yearly rent of L108 Scots, to commence at Whitsunday 1698, and to endure fifteen years. In November, 1704, Robert Affleck obtained a decreet of adjudication against Gabriel Alison, of the lands of Dunjop, Largs, and Whitepark; for security and payment of the sums contained in three bonds, granted by Gabriel to Robert after the 1700.

Robert Affleck, who had entered into possession upon his tack, died in the year 1718; and the possession was continued by his son John, without making up any title to the adjudication.

Hugh Alison, as apparent heir to the said Gabriel Alison deceased, brought a sale of the estate of Dunjop, includin g the lands of Whitepark; and, in the ranking of the creditors, appearance was made for Agnes and Margaret Afflecks, re-

presentatives of the said Robert, who claimed to be preferred upon the adjudication deduced by Robert in the 1704. To this adjudication it was objected, that it was extinguished in whole or in part, by the rents of the lands of Whitepark: not only by the tack-duties due by Robert Affleck, and retained by him upon the score of his adjudication; but also by the tack-duties due by John Affleck, who possessed by tacit relocation after his father's death. There was no question of the imputation of the tack-duties during the life of Robert Affleck, who was debtor by the tack, and had right to these tack-duties by his adjudication. But with respect to the tack-duties due by John, the son, it was contended, that these could not be imputed into the adjudication, to which John never made up a title.

The adjudication by a *pluris petitio* was reduced to a security; and it carried, that the tack-duties due by John Affleck must impute into the adjudication.

The judges who were for the interlocutor contended, that the tack-duties being adjudged by Robert Affleck, he was entitled to retain the same for his payment; that having actually retained these tack-duties while he lived, and having thus died in possession, by levying the rents in virtue of his adjudication, his son John was entitled to continue his double possession. He was entitled to enter into the natural possession of the land, by virtue of the tack; and at the same time to enter into the civil possession of levying the rents, by virtue of his adjudication.

I was not satisfied with this interlocutor. An apparent heir to a proprietor of land is entitled to continue the possession. Yet the rents levied by him, belong in law to the superior, as non-entry duties. I neither see practice nor principle for extending this privilege to the apparent heir of a real creditor. The rents belong to the debtor, proprietor of the land; and he must be preferred to the possession, unless he be excluded by some person having right to the real security: and the apparent heir had no right. John, it is true, had right to the tack by his entering into possession of the land; but he had no right to the adjudication, without a service. If Dunjop had brought a process against him for the tack-duties, he could not have defended himself with the adjudication; and if these tack-duties could not have been detained from Dunjop by virtue of the adjudication, they certainly could not impute into the adjudication.

Select Decisions, *No.* 133. *page* 188.