

a ranking and sale of the estate was raised. But I think the thing is otherwise clear upon the principles of law; for the new tack, till it was clothed with possession, was no more than a personal obligation, which could not be effectual either against a purchaser, or against creditors entering into possession. There might have been some more doubt, if the tenant had renounced his old tack and taken a new one for nineteen years; but I should have been of the same opinion even in that case: and there I think the principles the Lords went upon will very well apply to an extraordinary act of administration, which Sir John could not exercise while his creditors were *in cursu diligentiae*, to get the estate sequestrated.

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1766. *March 4.* SPENSER BOYD *against* ———.

THIS case was before the Court 22d January last, and this day the Lords adhered. Lords Pitfour and Coalston gave it as their opinion that a personal right to lands was affectable by every personal obligation relative to the lands; yet, if it was intended that the proprietor should be debarred from alienating or contracting debts, it must be done in the form of prohibitory, irritant, and resolute clauses; because, although the Act of Parliament 1685 does not relate to such personal rights to lands, yet, by the common law, before that Act was made, a proprietor could not be restrained from the free use of his property except in that form, and it would be unjust that a man's debts should not affect his estate, and yet that he should be allowed to enjoy it. The only difference, therefore, in this matter betwixt a personal and a real right to lands, is, that, where the right is real, there must be two registrations, both of the tailyie and of the sasine, whereas in the case of a personal right there is no occasion for any recording at all.

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1766. *June 13.* DODDS *against* ———.

THE question here was about lands purchased by a wife, the disposition bearing that the price was paid by her, though it did not appear that she had any money of her own. These lands she afterwards sold, and the husband now comes and claims them from the purchaser, upon this ground, that the money with which they were bought was the husband's, which the wife had either stolen, or the husband had given her it. Lord Pitfour said, that in either case the singular successor was safe, for, having purchased the lands upon the faith of the records, he was not concerned how the money was got with which his author bought the lands; and the case is quite different from that where the lands themselves are gifted by the husband to the wife; for, in that case, no doubt, the husband, by revoking the donation, annuls the sale, and can evict the lands from any purchaser from the wife. Lord Kaimes went so far as to say, that even the husband could not have action against the wife