

TACKS, see also MASTER and TENANT.

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TAILYIE.

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1772. July 31. The EARL of ABERDEEN *against* IRVINE of DRUM.

DURING the dependance of the process of reduction, Irvine of Drum against the Earl of Aberdeen, &c., a discovery was made by the defenders, that the entail of the estate of Drum 1683 had never been properly recorded, in regard that, although the charter upon the entail and a relative nomination of heirs had been produced, the entail itself had never been produced judicially in the Court of Session, in terms of the Act 1685. They founded their objections, *first*, upon the words of the Act 1685; *secondly*, upon the practice; *thirdly*, upon the decision in the case of *Kinnaird*. "The Lords, 24th July 1772, found that the entail executed by Alexander Irvine of Drum in the year 1683, not being duly recorded, is not valid against creditors and other singular successors." And to this they adhered.

At advising the principal cause, Lord Covington argued that there was a material distinction betwixt this case and the case of *Kinnaird*; for, in this case, the charter contained, and proceeded on a *novodamus*, so that it was truly the tailyie. But none of the other Judges seemed to regard this distinction. And, on an appeal, 9th April 1777, the judgment 24th July 1772 was affirmed.

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1763. December 7. RANKING of BALGAIR.

IN the ranking of Balgair the Lords found, That an heir of entail cannot create a thirlage to a mill not part of the estate; that it was a species of alienation, and fell under the tailyie.

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1772. June . CAMPBELL of BLYTHSWOOD *against* LOVE.

By the tailyie of the estate of Blythswood, it was provided, That the heirs of entail should not set tacks for above the space of nineteen years.

A tack having been entered into of part of the tailyied estate betwixt James Campbell of Blythswood and John Love, for nineteen years from Candlemas

1751, it expired at Candlemas 1770. But, upon the 6th March 1766, Blythswood set another tack of the same lands to Love, but for a higher rent, for nineteen years, from and after Candlemas 1770; but Blythswood having died in November 1767, his heir, in March 1770, raised an action of removing against Love, libelling upon the Act of Sederunt 1756, and concluding that he should remove at Candlemas 1771 from the arable lands, and at Whitsunday 1771 from the houses and grass. And it was pleaded for the heir, that, as the first tack expired at Candlemas 1770, and Blythswood having died before commencement of the second tack, Love therefore fell to be removed in terms of the libel.

“The Sheriff of Lanark, 24th July 1770, found that the defender, in virtue of the last tack, dated 6th March 1766, had right to possess the lands libelled, for nineteen years from the date of the tack; and assoilyed him from the process of removing.”

Both parties complained by mutual advocations. The tenant said he had got too little; the master said he had got too much. But the Lords, “on report of Lord Coalston, advocated the cause, and found that the defender, in virtue of the tack dated 6th March 1766, had right to possess the lands libelled, for nineteen years from the date of the tack.”

In arguing this cause it seemed to be held for law, That a tack, granted by the proprietor of an entailed estate, is not good against a subsequent heir of entail, unless the tack was clothed with possession in the lifetime of the granter; and that, however it might found the tacksman in an action of damages against the granter and his general representatives, it cannot be set up against a subsequent heir of entail. But then, in the present case, it was said, that Love, in virtue of his second tack, had truly obtained possession. For, as the heir knew of this second tack, it was incumbent upon him to have warned Love to have removed at Candlemas 1770, and not at Candlemas 1771, by which time the first year of the new tack was expired; and his not doing so was a tacit homologation of the tack, and a consent that Love should enter into possession upon it.

But the Lords took a middle course; for, as it was clear that Blythswood and the tenant, by the destroying the old tack, could have entered into a new tack for nineteen years, commencing from Candlemas 1770; therefore they thought that, though the new tack could not be supported as a tack of nineteen years from Candlemas 1770, yet it might be from March 1766. And they pronounced decret accordingly. And it was said that this was similar to a verbal legacy, which will be sustained for £100 Scots, but for no higher sum.

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SIR WILLIAM DENHAM of WESTSHIEL *against* MAITLAND, &c.

SIR William Denham of Westshiel settled the estate on a certain series of heirs by way of strict tailyie, which was duly recorded *anno* 1723.

He was succeeded by Robert Baillie, who, in order to carry the procuratory and precept in the entail, expedie a general service, as heir of provision to Sir