

1776. *February* . BELCHIES and THOMSON *against* CADDELLS.

BUT, Belchies and Thomson having set, to Caddells, a lease of the whole estate of Grange, for a yearly rent of £1000 sterling, clear of all charges, taxes, and deductions; and an action having been brought at the instance of the Caddells, to oblige them to repair the farm-houses on the estate;—it was pleaded in defence, That they were not liable to do this, because not laid under such obligation by the lease; *2do*, Whatever might be the case in the set of a particular farm, yet, as, in this case, the whole of the estate of Grange was set as an *universitas*, the transaction did naturally import that the lessees were to take the subjects as they then were; more especially, *3tio*, That, by the lease, the tack-duty is declared to be payable without any deduction. Accordingly, Lord Auchinleck, Ordinary, pronounced this interlocutor, 28th July 1775:—“The Lord Ordinary, having considered the mutual memorials, and specially that the transaction was for a lease of the whole estate of Grange, which consisted of sundry farms at the date of the transaction possessed by sundry tenants, finds, That the pursuers not having stipulated any obligation from the defenders to put all the houses in a sufficient condition, is sufficient evidence they agreed to take the estate in the condition it then was; and to be put precisely in the state of the master; and therefore sustains the defences, assoiliyes the defenders, and decerns.”

And the Lords, having advised bill and answers, adhered.

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1776. *November 27.* MURRAY *against* TORRIE.

IN a tack for a small piece of ground near Aberdeen, set by Murray to Miln, his heirs or assignees, for 999 years, it was *inter alia* stipulated, “That the person succeeding to Miln, either as heir or assignee, should be obliged, within three months after his entry, to grant an obligation to the leaser and his heirs, for implementing the hail articles of the tack.”

This tack, having passed through other hands, was purchased by Torrie, who refused to grant the above obligation, alleging that it related only to the immediate heir or assignee of Miln,—but no further; and that the demand was wanton and unnecessary.

In a pursuit before the Sheriff of Aberdeen, decret went against Torrie; and in a suspension, Lord Monboddo, Ordinary, 2d July 1776, found the letters orderly proceeded, and gave expenses; and this day the Lords adhered. They thought the clause extended to all heirs or assignees during the currency of the tack. Lord Covington demurred, and quoted a decision, *Lady Sinclair of Castlehill against Sir James Stewart*, June 1732, where, in a feu-right, a superior having bound himself to receive the assignees or singular successors of the vassal gratuitously, or for a small sum, it was found, that, unless the words were very express, they extended only to the first successor.

See case of the *Town of Inverness against Duff, &c.* 4, *New Coll.*, p. 329.