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Note.—Lord Kames says, Dec. p. 239, "This process was spun out to a great length by a multitude of points and circumstances which deserve not to be recorded. The cause, purified of its dross, resolved at last into the following point:—What should be the effect of Elizabeth's ratification? It is effectual to exclude Elizabeth herself; but is it also effectual to exclude Andrew's other heirs insisting in a reduction of the settlement after Elizabeth's death, though they do not represent her? It occurred at advising that if the reduction had been brought before Ogilvie was infeft, the pursuer could have no title without being served heir in special to the land remaining still *in hæreditate jacente* of Robert. But that Ogilvie's infeftment which *funditus* denuded Robert of the property made the case very different. The ratification (renunciation) was accordingly sustained as a bar to the action."

[M. 15,196, Fac. Col. ii. p. 256.]

Captain JAMES FRAZER of Belladrum, - *Appellant;*
HIS MAJESTY'S ADVOCATE, - - *Respondent.*

House of Lords, 30*th March* 1762.

LEASE—DURATION—POWERS.—A lease was granted for 1140 years for a valuable consideration given, besides a yearly tack-duty. Sasine and possession followed: Held, on the forfeiture of the estate, that the lease was good against the granter, and also against the crown, reversing the judgment of the Court of Session.

June 8, 1770.

OF this date, *Hugh* Lord Lovat granted a lease of the lands of Fingask to Simon Frazer for the period of twenty times nineteen years, or 1140 years, in which he was duly infeft. This lease was afterwards acquired by and assigned to the appellant.

Simon Lord Lovat succeeded to the title and estates of Lovat; and in 1747 was attainted for high treason, and his estates forfeited to the crown.

The appellant then, in right of the lease, made a claim against the crown, to be allowed the possession under the lease, on payment of the stipulated rent. But his Majesty's Advocate objected to the lease, on the ground, 1*st*, That a lease of lands, for so long a term as 1140 years, was an anomalous right, unknown in the law of Scotland, and therefore invalid; 2*d*, Besides, even supposing it good, Hugh Lord

Lovat had no power to make an effectual lease in 1670, because he was divested of the lands at that time, he having in 1665, conveyed the fee to his daughter; 3*d*, That supposing the lease good against the granter and his heirs, yet it did not follow that it could be binding on the late Lord Lovat (the forfeiting Lord), because he acquired the estate not by descent, but by singular title. He had acquired the estate by apprisings and adjudications led for debt. Answer, 1*st*, That the lease was a fair purchase, obtained without fraud, and for a valuable consideration besides an adequate rent and tack-duty; and possession had followed upon it from its date to the present time; and therefore, supposing it originally defective, it was now placed beyond all question by the positive prescription; and every ground of challenge barred by the negative prescription. That there was no law or usage limiting leases to any certain number of years. That here infeftment and possession had followed; and this made it good not only against the granter and his heirs, but also against purchasers or singular successors; 2*d*, That although the base fee at the date of the lease, was conveyed by the granter to his daughter, yet in him there still remained the *dominium directum;* and *that* base, or subaltern infeftment, was afterwards evacuated by the subsequent existence of a son, who was entitled to redeem the estate from the daughter; 3*d*, That the late Lord Lovat, no doubt, had entered into possession upon an apprising, but he was no less liable, as representing his father the lessor, and as taking from him.

Of this date, the Court found the tack not good against Jan. 14, 1758.
" Simon, late Lord Lovat, the forfeiting person, nor is now
" against the crown, as coming in his place, and therefore
" dismisses the claim."

On reclaiming petition, the Court adhered in so far as it Feb. 3, 1759.
reclaims against two interlocutors, finding the tack not good against the Crown. But remitted to hear how far it is competent to sustain the tack for 19 years. Memorials were given in on this point; but the Crown having appeared and consented to the tacking being sustained for 19 years, the Dec. 6, 1759.
Court declared accordingly.

Against these interlocutors the present appeal was brought.

After hearing counsel, it was

Ordered and adjudged, that so much of the said interlocutor of the 14th of January 1758, as finds the tack in question was not good against Simon late lord Lovat

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the forfeiting person, nor is now against the crown as coming in his place, and dismisses the claim; as also the said interlocutors of the 22d of December 1758, and the 3d February and 6th of December 1759, complained of be, and the same are hereby reversed, and that the said appellant's claim be sustained.

For Appellant, *Alex. Lockhart, Wm. Johnstone.*
For Respondent, *C. Yorke, Thomas Miller.*

CHARLES CAJETAN COUNT LESLIE, LEOPOLDUS COUNT LESLIE, Eldest Son, ANTHONY LESLIE, Second Son, and CHARLES COUNT LESLIE, Third Son, of the said COUNT CHARLES CAJETAN LESLIE - - - } *Appellants;*

PETER LESLIE GRANT, and his CURATOR, Ad Litem - - - } *Respondents.*

House of Lords, *2d February* 1763.

ALIEN—PROOF.—A person, a natural born subject of England, had issue born abroad before the 7 Anne (Naturalization act), out of the ligeance of the King. This son had issue, Count Anthony Leslie, also born out of the ligeance of the King; Question of law submitted to the whole judges of England: Whether Anthony was capable of inheriting land estates in Scotland? Held unanimously, on full consideration of the statutes, that Anthony Count Leslie, was to be deemed an alien, and not capable to inherit such estate—That the statutes extended only to the children of a natural born subject of the first degree, and not to the grandchildren, and Anthony's father not being a natural born subject of England, but an alien born abroad, before the passing of the 7 Anne, he could take no benefit.—Proof rejected in consequence of diet not being regularly intimated in terms of commission issued.

FOR the circumstances of this case, vide Craigie and Stewart's Reports, p. 324. It arose out of a settlement of the estate of Balquhain by entail, with conditions, that should the first heir of entail also succeed to estates in Germany, then in that event, the estate of Balquhain was to devolve on the next heirs therein specially called—the object being that the two estates should be kept separate, and enjoyed