

1602. *January 20.* SIR WALTER LINDSAY *against* LO. BONITOWN.

No 14.

A liferent tack being granted to a man, and a nineteen year's tack thereafter to his heir, it was found that, although his escheat fell, it could not comprehend his heir's tack; but he having thereafter committed treason, it was found that the inability of his posteriority made even his heir's tack to fall under escheat and forfeiture.

SIR WALTER LINDSAY having obtained a gift of the escheat of umquhile Patrick Wood, feuer of Bonitown, executed for certain crimes of treason, in so far as the same escheat might be extended to the tack of the teinds of the lands of Balgaws, and certain other lands lying in the parish of Aberlednoch, pursued the Laird of Bonitown, elder, and ———, wadsetter to the said umquhile Patrick Wood, younger of Bonitown, and certain others parishioners of Aberlednoch, to hear and see letters conform, granted at his instance, upon the said tack. It was *alleged* for the part of the Laird of Bonitown, elder, That no letters conform could be granted upon the said tack, at the said Sir Walter's instance; because, long before committing of the said crime by the young Bonitown, he being put to the horn, his escheat was disponed to his father, who, by virtue thereof, obtained declarator and possession of the hail teinds of Aberlednoch divers years before his treason, and so this tack could not fall under his forfeiture. To which it was *replied* by Sir Walter, That that first gift of escheat could never comprehend this tack, whereupon he sought declarator, because young Bonitown having obtained a tack of the Abbot of Jedburgh, of the hail teinds sheaves of the parish of Aberlednoch, to himself during all the days of his lifetime, and after his decease to his heir for the space of 19 years, so this tack, destined to his heir, could never pertain to himself in his lifetime, nor have beginning before his decease, nor fall under his single escheat, or anyways appertain to old Bonitown, donatar thereof, but fell of new to his Majesty by his forfeiture, and being disponed, by virtue thereof, by his Majesty, to the said Sir Walter, he ought to have letters conform thereto. It was *answered* by old Bonitown; That all tacks fall under single escheat; and as the young Laird of Bonitown might have sold this tack, or this tack might have been comprised from him, so it fell under single escheat. It was *triplied* by Sir Walter, That whether liferent tacks, or long tacks, might fall under simple escheat, he would not dispute, because that was not his case. But it was possible that all tacks that pertained to the relict might fall under his escheat; yet this tack never pertaining to him, but being provided to his heir, and so never able to pertain to him, nor have a beginning in his lifetime; but being expressly conferred to enter after his decease, it could never pertain to him, and consequently could never fall under his single escheat. And as to the power he had to annailzie it, or that it might have been comprised from him, so might he have annailzied his heritage, or his heritage might have been comprised from him, which nevertheless could never have fallen under his single escheat, and he could never have annailzied it as his own; but because it was destined to his heir, who would not have had right to it but as heir to him *hoc ipso* that he was his heir, he believed to warrant his alienation, and could not come against his deed. The Laird of Bonitown, elder, produced two practics, where liferent

tacks were decerned to fall under single escheat; notwithstanding whereof, his hail allegiance were repelled. Thereafter compeared the Laird of Melgum, and alleged that no letters conform could be given to the said tack, so far as concerned his teinds, because young Bonitown had set to him a 19 year's tack of his own teinds, long before the committing of the crime for which he was forfeited, like as the entry thereof was at Lammas 1600, long before the crime, and so could not fall under his forfeiture. It was *answered* by Sir Walter, That the alienation foresaid could be no right to the said Melgum, because young Bonitown having no right to the 19 year's tack, which was set to his heir, he could not make any assignation thereof longer than his own life; and his gift was not only of things pertaining to Bonitown younger, but also of things fallen to his highness by inhability of his posterity.—THE LORDS considering that Melgum's tack was of his own teinds of his own lands, and had the entire and apprehended possession before the crime, they would not annul it so summarily, and therefore granted letters conform to Sir Walter, but prejudice of Melgum's tack as not compearing.

No 14.

Fol. Dic. v. I. p. 313. Haddington, MS. No 666.

1675. November 11. VEITCH against PALLAT.

No 15.

A BANKRUPT having granted assignation to one of his creditors in prejudice of another who had done more timeous diligence, by horning, &c. the prior creditor having affected the subject assigned, by taking a gift of escheat, was found to have action of repetition against the assignee, who had received payment.

Stair. Dirleton.

* * * See No 127. p. 1029. No 159. p. 1073. and No 91. p. 2874.

1680. January 23. MARQUIS of HUNTLY against GORDON.

No 16.

GORDON of Cairnborrow's predecessor having gotten a feu-right of the lands of Cairnborrow from the Earl of Huntly, whereof the *reddendo* is 10 bolls of victual, and 14 pounds money; thereafter, in *anno* 1625, there is a charter by Huntly to Cairnborrow of the same lands, wherein the feu-duty is ten merks; and there is a clause subjoined, that, whensoever the lands should be in the King's hand, by ward, non-entry, or any other way, that Cairnborrow should pay to the King 50 merks, which is more than the quadruple of the retour. This Marquis of Huntly being donatar to the forfaulture of the Marquis of Argyle, who was infeft in the estate of Huntly by an expired apprising, thereupon

A blank in a charter for the *reddendo* to the King not being filled up before forfeiture, the vassal was found liable for the feu-duty in the original feu charter.