

Gentleman and his heirs, were the defender to prevail in the present action, cannot be disputed. Nor will it avail him to distinguish between what he terms the tack which he would limit to two 19 years, and the obligation to grant the renewals. A tack, and an obligation to grant a tack, stand precisely upon the same footing. Besides, as the defender is specially assigned to this tack, and all clauses and obligations therein contained, the exception of it from the clause of warrandice must comprehend every obligation that could infer warrandice against Mr Cockburn.

3<sup>to</sup>, There was no improper neglect or omission. The pursuer's mother, who held the tack in trust for his behoof, applied to the Earl's factor for a renewal of the lease, before the two 19 years expired, and offered payment of the grassum; the delay was altogether upon the part of the defender; and it appears, that the intention of that delay and refusal was to prevail with the poor woman to accept of such terms as his Lordship was pleased to offer.

"THE LORDS found the reasons of reduction of the lease 1756 relevant and proved; and found that Lord Hopeton, though a singular successor, was barred *personali exceptione*, from objecting to the obligation on John Cockburn, in the lease 1718, to renew the same from 19 years to 19 years; and found, that the defender was bound to grant a new lease, in terms of the lease 1718, for the space of 19 years, from and after the expiry of the original lease, and to renew the same at the ish of every 19 years, upon payment of the stipulated grassum of L. 100 Sterling."

For the Pursuer, *Lockhart*.  
A. W.

For the Defender, *Sir David Dalrymple*. Clerk, Home.  
*Fol. Dic. v. 4. p. 78. Fac. Col. No 122. p. 285.*

1782. - January 17.

ARCHIBALD TOD *against* ELIZABETH WELLS and Others.

ARCHIBALD MEGGET took in lease the lands of Gosford, belonging to Captain Henry Wedderburn. Soon afterwards, Captain Wedderburn, then in India, authorised certain commissioners to sell these lands, which were purchased at a public roup by Sir John Halket. But though the commissioners were thus empowered to sell the lands, they had received no authority to grant a disposition, or to give sasine of them.

In the mean time, Sir John Halket and Archibald Megget entered into a new lease, for a shorter term than that of the former; but, on account of greater latitude being allowed in the culture, a higher rent was stipulated. Captain Wedderburn, however, having died, and the necessary writings remaining unexecuted, Sir John Halket, without opposition, obtained decret reducing the sale. Megget possessed the farm till the expiry of the term stipulated in the new lease. Upon this, Mr Tod, factor appointed by the Court on

not intett, having granted a lease, if, upon the sale being reduced, the lessee can challenge his author's right.

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the estate, of which a process of sale had been brought at the instance of Captain Wedderburn's apparent heir, raised an action against Elizabeth Wells, and other Representatives of Megget, then dead, for payment of the arrears which had been due by him, according to the new lease. They, being desirous to abide by the former one, in which the term of endurance was larger, and the rent smaller than those of the latter ;

*Pleaded* in defence ; Sir John Halket never had more than a personal right to the lands, and therefore could not grant a lease of them to be effectual against singular successors ; those successors at least who do not derive right from him. Nor, for the same reason, could he effectually relinquish or evacuate a subsisting lease of those lands. If so, the defenders still continue to be bound by their former one ; which, as it is thus binding against them, is certainly not less obligatory in their favour. Being then a subsisting lease, the defenders are willing to hold by that first bargain, in opposition to which the present action cannot proceed.

*Answered* ; Sir John Halket having been truly proprietor of the estate, his titles to which he might at any time have completed by adjudication in implement, leases granted by him would have been effectual against the heir of Captain Wedderburn. In this case then his discharge of a prior lease is not less valid and binding. Nay, though he had only been a putative proprietor, the lessee would have become effectually bound on the true proprietor's recognising his acts ; and this the pursuer, in the present proprietor's name, now does. The second lease, therefore, ought to regulate the claims of the parties ; and on it the present action is founded.

*Observed* on the Bench ; The lessee, in virtue of the new tack, continued the possession during the full period of its endurance. He was not, nor are his Representatives, entitled to challenge or object to the right of his author.

THE LORD ORDINARY had pronounced an interlocutor, finding, "That the lease granted by Sir John Halket on the supposition of his being proprietor of the estate of Gosford, which it was afterwards found he was not, was *not* obligatory on the defenders ;" but the COURT altered that judgment, and

" Found, That the above mentioned lease *was* obligatory on the defenders."

Lord Ordinary, *Alva.* Act. *Tait.* Alt. *D. Greme.* Clerk, *Orme.*  
S. *Fol. Dic. v. 4. p. 78. Fac. Col. No 22. p. 42.*

1791. November 15.

YORK-BUILDINGS COMPANY *against* MARTIN, STONE, and FOOTE.

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Bonds having been issued in a form calculated for ready currency, and apparently free

THE York-buildings Company, about sixty years ago, as a resource for procuring money, issued bonds to a large amount, for sums far exceeding the value obtained for them. They were in the following form, being transferable by indorsement, and similar to those of the East-India Company :