

1806. February 11.

LAWRIE *against* LAWRIES.

No. 2.

THIS was an action of reduction at the instance of an heir of entail, of a sale of part of the entailed estate made by his predecessor, under the authority of the Court of Session, for the purpose of redeeming the land-tax, in terms of the 38th Geo. III. Cap. 60. The farm sold was purchased at the public sale by the proprietor Walter Sloan Lawrie of Redcastle, and was disposed by him to his sisters Margaret, Elizabeth and Jacobina Lawries. In the sale, all the formalities prescribed by the statute were regularly observed; but upon the death of Sloan Lawrie, when the succession opened to William Kennedy Lawrie as the next heir of entail, an action of reduction was brought against the sisters of his predecessor, to have this sale reduced and set aside, upon the following ground; That the entailed property of the late Mr. Sloan Lawrie consisted of two separate estates, Redcastle and Bargattan, which were held under separate deeds of tailzie, both executed by the Reverend Walter Lawrie; the estate of Redcastle being entailed in 1727, and the estate of Bargattan in 1733; that though in general the destination in the two deeds of tailzie was the same, the daughters of Thomas Lawrie, one of the substitutes of the entail, were called to the succession of the estate of Redcastle, but were not called to the succession in the entail of Bargattan; and as there were in existence heirs of one of these daughters, it might happen that these two estates might descend to a different series of heirs; that the farm of Edgarton, which was sold for the redemption of the land-tax, formed part of the estate of Bargattan, and that the price of it was therefore improperly applied to the redemption of the land-tax of the other estate, it being expressly required by the statute, that the estates, of which the land-tax is redeemed, 'stand settled and limited to the same uses, and in the same order and course, and under the same restraints and conditions of succession,' as the lands which are sold.

It was maintained by the defenders, in the *first* place, That the entail executed in 1733 referred expressly to the entail of 1727, as containing the series of heirs to whom the entailer intended to convey his whole estates; and as the heirs in both were required to bear the same name and arms, and to fulfil the same conditions, it was evident, that the omission of the daughters of Thomas Lawrie happened altogether *per incuriam*; and though they were not mentioned *nominatim*, the reference to the former deed of tailzie, in which they were mentioned, was equivalent to a nomination: And, in the *second* place, That the misapplication of any part of the price forms no ground for reducing the sale, as the act of Parliament has provided a sufficient remedy, by enacting, that any surplus of the price that may remain after redemption of the land-tax, shall be applied, either in payment of the debts affecting the remainder of the entailed estate, or be invested in the purchase of other lands, to be entailed under the same conditions and limitations.

A sale of entailed property for the redemption of the land-tax, in terms of the 38th Geo. III. Cap. 60. reduced by a subsequent heir of tailzie, upon the ground that the price was applied partly to the redemption of the land-tax — of a property which might eventually descend to a different series of heirs from those called to the succession of the lands which were sold.

No. 2. The cause was reported by the Lord Ordinary; and the Court (23d May 1805) 'sustained the reasons of reduction; reserving to the defenders all 'claims of relief competent to them; and to the pursuer his objections there-
'to.'

And, upon advising a reclaiming petition, with answers, their Lordships adhered.

Lord Ordinary, *Glenlee*.
Alt. *Gillies, Campbell*.

Act. *Erskine, Maconochie*.
Agent, *Vans Hathorn, W. S.*

Agent, *Jo. Smyth, W. S.*
Clerk, *Home*.

J.

Fac. Coll. No. 237. p. 534.

* * Besides the general argument founded on the two separate deeds of entail, the pursuer likewise argued against the sale of the particular farm, as extremely prejudicial to the estate, on account of its situation and other circumstances, while there were detached farms of a smaller extent, that might have been sold with much greater propriety; and that the whole measure was a device to obtain, at a low price, a valuable part of the estate in fee-simple. These arguments the defenders endeavoured to obviate. But it is unnecessary to notice these objections, as the Court decided the case upon the general grounds that have been stated.

J.