

gard Skails, the tacksman, was debarred from making over his right to any assignees,—

ANSWERED,—He had power to assume partners, which he was ; and that they had expended above £1000 sterling, in repairing the houses, and buying wheat and other materials for their manufactory of starch ; and he had no other way of reimbursing himself but by this tack. The Lords sustained his interest.

Then he ALLEGED,—That the condition of the tack was usurious and odious ; and at worst was purgeable at the bar. *2do*, They must have reparation of their damages, by Sir James's debarring them from the possession, in putting on padlocks upon the doors, and turning his beasts into the park and eating the grass thereof, whereby they are damnified in more than a year's rent.

ANSWERED,—That this being a conventional and not a legal irritancy, it was not purgeable, especially now after two years' failure ; neither did Sir James occasion any damage to them ; but, being applied to as a justice of peace by some of Skails's creditors, he secured the doors, that the goods might not be abstracted, but made forthcoming ; and their pretence of damage could not stop his declarator, but behaved to be liquidated in a process by itself.

The Lords found the irritancy purgeable, and that their failing to pay the tack-duty arose through Sir James's debarring them from the possession of the houses ; and therefore declared they would receive the consideration of their damages *hoc ordine*. And some proposed, That it not being reasonable for the tacksmen under that pretence to retain the whole, therefore, that they might pay up one year, and let the other lie till the event of the damages appeared ; but the Lords left the regulation of that whole matter to the Ordinary, to take trial and probation what was their true damage, and how much should be retained on that account, Sir James restoring them immediately to the possession.

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1706. *February 23.* LORD RANKEILLOR *against* DINMUIR and OTHERS.

LORD Rankeillor, as executor-creditor to Sir John Ayton, against Dinmuir and Others, his debtors. ALLEGED,—They could not pay, because the debts were assigned to the children of the second marriage, and the assignations intimated ; and who compeared and craved preference. ALLEGED,—The assignations were gratuitous, and no better than donations *mortis causa*, and can never compete with lawful creditors. ANSWERED,—They were good, and cannot be reduced on the Act of Parliament 1621, unless Lord Rankeillor subsume that Sir John was under diligence at the time, or bankrupt ; whereas they offer to prove he left an estate sufficient to pay all his debts and more. See *Stair, tit. Reparations*.

The Lords thought the case fit for an accommodation, and recommended to the parties to agree.

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