

1711. *February 22.* MR. WALTER LAURIE, Minister of the Gospel at Stranraer, *against* SIR ALEXANDER MAXWELL of Monreith.

No. 42.

In the action at the instance of Mr. Walter Laurie, as assignee by the late Lady Monreith to a tack of her jointure lands, set to the deceased Sir William Maxwell of Monreith, for 800. merks yearly, to be paid at two terms of the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment at Whitsunday 1688, and so furth yearly, termly, and proportionally, during all the days of her life, against Sir Alexander Maxwell, as heir to Sir William his father, the Lords found, that the pursuer had only right to the tack-duty, for the term of Martinmas 1709 preceding the cedent's decease, and had no right to a proportion thereof from Martinmas till March thereafter, when she died.

Forbes, p. 504.

1725. *February 10.*

RODERICK MACLEOD of Cadboll, *against* GEORGE MACKENZIE of Inchcoulter.

No. 43.

The Earl of Cromarty, with a view to the more easy payment of his debts, in January 1718, set a tack of his lands and baronies of Strathpeffer, Aird, and others, to Æneas Macleod of Cadboll and the defender conjunctly and severally, for the space of nine years, commencing from Whitsunday 1718, for a certain tack-duty payable for the crop 1718 at Candlemas 1720, and so forth yearly during their possession: The tack contained this provision, "That in case of the decease of either of the said tacksmen, the tack was to subsist in the person of the survivor, the party deceasing being only liable for such years of the tack-duty as should be run during his life; and if both the tacksmen should die within the years of the tack, the same was to expire and become void."

Found that a party who survived the legal term of Martinmas, although not the conventional term of payment, had been liable for the half year's rent.

Cadboll died 20th December 1719, and Inchcoulter took upon him to intronit with and dispose of the victual of crop 1719, upon which Cadboll's son and executor pursued Inchcoulter to account for the profits of the crop 1719, his father having survived both the legal terms of that year, which regulates the interests of temporary rights ceasing by death, as was found in the case betwixt Trotter, a liferenter, and Rothead an executrix, 12th January, 1681, No. 33. p. 16899.

It was answered for Inchcoulter: That Cadboll having died before the term of payment of the tack-duty, viz. Candlemas 1721, for crop 1719, as well as the term of payment of the tenants' rents, which being mostly victual, were only payable between Yule and Candlemas 1720, his representatives could have no share or interest in the rents of the crop 1719, especially seeing Inchcoulter had all the trouble of receiving and selling the victual; and as to the case between a liferenter and executor, it was very different from the present between two tacksmen.

No. 43. The Lords found, That Cadboll having survived Martinmas 1719, the legal term for payment of the rents by the tenants, he was liable for his share of the tack-duty that year; and therefore found the defender liable for the half of the profits for that year.

Act. *Ja. Graham, senior.* Alt. *Jo. Forbes.* Reporter, *Lord Cullen.* Clerk, *Mackenzie.*
Edgar, p. 164.

1739. November 6.

MURRAY KYNNYNMOUND *against* CATHCART and MRS. ELIZABETH ROCHEID.

No. 44.

Annual-rents upon heritable bonds, due at the legal terms, unless the term be anticipated.

It was in this case found, that annual-rents upon an heritable bond are not due *de die in diem*, as in moveable bonds, but that the same fall due in like manner as rents of lands; and therefore, where, by an heritable bond, the annual-rents were payable at Whitsunday and Martinmas, the creditor dying upon the first day of May, his heir was found to have right to the annual-rents from and after the Martinmas preceding.

Nevertheless, it was also found, that in such of the heritable bonds, wherein the conventional terms of payment were not Whitsunday and Martinmas, but Lambmas and Candlemas, the creditor, as said is, dying upon the first day of May, the heir was only to have right to the annual-rents from and after the Candlemas preceding, and that the annual-rents due at the Candlemas did belong to the executors.

The reason of the difference was this: In the former case, the legal and conventional terms were the same, but here, by the conventional terms, the annual-rents are payable before the legal term; and the meaning of the common maxim, that the legal and not the conventional terms are the rule between heir and executor, is no other than this, that the postponing the legal term by the convention of parties, which generally is the case of tenants' rents, does not deprive the executor of the benefit of the legal term. But if, by the convention of parties, annual-rents, for example, be made payable before the legal term, the executors will have the benefit of that convention; and the case would be the same in a forehand payment of rents of lands, for there is no instance of what is both due and exigible not going to executors. *Vide* HERITABLE AND MOVEABLE, *eodem die, inter eosdem*, No. 4. p. 5415. and No. 137. p. 5590.

It was upon the same ground found, February 26, 1740, between the heirs and executors of the Earl of Selkirk in general terms, that the executors had right to the annual-rents of heritable bonds payable at two terms in the year, and that for the half year's annual-rent payable at the conventional term in the bonds, immediately preceding the death of the late Earl of Selkirk; but that the annual-rents since the said last term belonged to the person having right to the principal sum.

Kilkerran, No. 1. p. 563.