

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.*

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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.