

1735. February 10. LORD BALCARRAS *against* L. ARDROSS.

No 41.

A bond and tack of teinds granted *in lecto*, reduced only *a tempore litis contestatæ*.

IN reductions of rights, the Lords sometimes reduce the rights from the beginning, sometimes *a tempore litis contestatæ*; according to their arbitrament; and as they find the party defender to be *in bona vel mala fide*; so, in the reduction pursued by Lord Balcarras against the Laird of Ardross, of a bond and tack of teinds made by his father the umquhile Sir William Scott, *in lecto egritudinis*; THE LORDS reduced the bond and tack, *a tempore litis contestatæ*.

*Fol. Dic. v. I. p. III. Auchinleck, MS. (REDUCTION.) p. 188.*

1765. February 9.

PETER LESLIE-GRANT of Balquhain *against* THOMAS DUNDAS of Fingask.

No 42.

A tacksman held from a person whose right was reduced. Found that the *bona fides* of the tacksman was not interrupted till his own tack was reduced; from which term only he was liable to the pursuer for surplus rents.

IN the year 1756, Peter Leslie-Grant, a substitute in the settlement of the estate of Balquhain, brought an action of reduction and declarator against Count Cajetan Leslie and his three sons, Counts Leopold, Anthony, and Charles, James Leslie of Pitcaple, and his own father; concluding for reduction of the titles of Count Antonius, who had been found, by a judgment in the last resort, to be the next heir upon whom the estate of Balquhain devolved, who had, accordingly, made up his titles to that estate; and for declaring his own right thereto, in regard the several heirs called before him were persons professing the Popish religion, or aliens, born without the allegiance of his Majesty, or both the one and the other.

The result of this process of reduction, was a judgment of the Court of Session, pronounced on the 4th of December 1761; by which it was found proven, that the pursuer's father was a professed Papist past the age of 15; that Count Cajetan and his three sons were aliens, whereby they had no inheritable blood; and therefore the Court declared the right in Count Anthony's person to be void and null; and another judgment, pronounced upon 5th February 1762, finding and declaring, that the pursuer was then the nearest lawful protestant heir of tailzie entitled to succeed to the estate of Balquhain: Which judgments, upon an appeal, were affirmed by the House of Lords, on the 2d of February 1763.

Count Anthony, whose residence was abroad, had set the estate to Mr Dundas of Fingask, for a tack-duty of 1000 ducats, payable upon the exchange of Rotterdam, at two terms, by equal portions, viz. the 15th of January and the 15th of August, yearly; and as Mr Dundas was creditor to Anthony in very considerable sums, it was agreed between them that Mr Dundas should retain the tack-duty till such time as these sums were extinguished.

The pursuer, immediately upon obtaining the judgment of the 4th of December 1761, had raised a process of mails and duties against the tenants upon the estate of Balquhain, libelling particularly upon the above judgment, and