

not as he thought proper ; for he was not bound to enter into possession, and, if he did enter into possession, might relinquish when he pleased : whereas, by the nature of the tack, the tacksman is obliged to possess and to continue the possession all the time the tack lasts. *2do*, Supposing it were a back-tack, yet it is only for a term of years, which may perhaps be very short ; whereas, the characteristic of an improper wadset, is a back-tack during the time of the not-redemption. That shows manifestly the intention of parties to be, that the wadset shall be no more than a right in security ; whereas, when the tack is only for a time, it is doing no more than any proprietor would do with his lands.

N.B. This was the reasoning of Elchies, who seemed to allow, that if the wadset was once improper by a back-tack during the not-redemption, although the irritancy of this tack, for not paying the rent in two years, was incurred and declared, yet that would not alter the nature of the wadset, which, being improper in its original constitution, would still continue so.

The Lords found the wadset proper. *Dissent. Arniston.*

1741. *November 10.* HELEN HUNTER *against* JAMES BLAIR.

[Elch., No. 5, *Warrandice* ; Kilk., No. 1, *ibid.* ; C. Home, No. 179.]

THIS decision carried by a narrow majority, against the opinion of Arniston and Drummore ; and while a reclaiming bill was preparing, it was compromised.

1741. *November 14.* CHISHOLM *against* LORD LOVAT.

THE Lords found, in this case, that an adjudication, with a charge against the superior, was the first effectual adjudication : notwithstanding, that neither a charter nor a year's rent was offered. This they found sufficient in competition with another adjudication ; but, had the question been betwixt the adjudger and the superior, they would have found otherwise.

1741. *November 24.* JOHN SEMPLE *against* ANNABEL EWING.

THE question here was about the effect of diligence upon an obligation of cautionry, within the seven years ; whether it only *secured what fell due in that time*, (these are the words of the Act 1695,) or if it perpetuated the obligation as it was at the beginning, and so, if it was a subject bearing annualrent, made it still continue to do so even after the seven years. It was argued that dili-