

lary. Shortly after granting this assignation and factory, he grants a bond of tailzie in favours of Charles Lermont his nephew, and the said Mark Drummond, tailzing to them, (failing heirs of his own body) the foresaid houses; whereupon, after his decease, they were served heirs of tailzie, and in implement of the bond, adjudged; and now insist, that either the subject may be sequestrated in another factor's hands, whom the pursuers would name, and who would serve *gratis*; or if Mr Sinclair inclined to continue, that the Lords would discharge the continuance of his salary.

*Answered* for the defender, That the right in question being a disposition granted ay and while he and the other creditors were paid, with a salary for managing the subject, therefore, as the granter could not remove him, or invert his possession, till the debts were paid, so neither can his heirs of tailzie, who are liable in warrandice.

*Replied* for the pursuers, *imo*, That the right is no real right, but a naked assignation to mails and duties with a factory; and these subsist no longer than the granter's life; and though heirs be liable in warrandice, yet that is only to be understood according to the nature of the right; and so the warrandice here cannot be said to be contravened by the heirs taking on them the managing of their own estates, and intromitting with the rents after the predecessor's death, which are indeed not assigned, and far less are they obliged to continue a salary to a factor. And yet, *2do*, They are willing the rents be uplifted by a factor, (for the behoof of the creditors, if any yet remain) whom they will find to serve *gratis*.

THE LORDS found no salary due to James Sinclair from Martinmas last; but allowed him to continue his possession, he finding caution to count to all parties having interest, and to do diligence; and in case of his refusal, remitted to the Ordinary to sequestrate, and appoint a factor in common-form.

Act. Falconer.

Alt. Hay.

Clerk, Gibson.

Fol. Dic. v. I. p. 287. Bruce, No 23. p. 31.

1724. July 14.

FRANCIS HEDDRINGTON of Astonbie *against* JOHN-HENRY BOOK and THOMAS DOD, of London, Merchants.

MESSRS BOOK and DODS having entered into articles of agreement with Obadia Sedgwick, 11th August 1715, and covenanted, that upon their obtaining a tack of certain lands, coalleries, and iron-works, from the Dutchess of Buccleugh, he should be admitted a sharer for one fifth part, and have a salary of L. 150 Sterling yearly for managing the subject of the set. The tack was accordingly obtained in September 1715, and they, upon the 10th of that month, in implement of the articles, assumed him as partner for one fifth, and granted

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of debts due to the assignee and others, bearing to endure for 13 years, and ay and while these debts should be paid, with allowance of L 5 Sterling of yearly salary. After the debtor's death, his heir withdrew the salary, and it was found, that the factory fell by his death.

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A factory was granted to a person during life. It afterwards appearing that he was unfit for the management, the Lords found the factory revocable.

No 4.

him a factory with the foresaid salary, to continue for the endurance of the tack, or his own life.

Mr Sedgwick entered upon the management, but soon discovered that he was unfit for it, by gross malversations and running in arrear to the partners, which obliged them in May 1717 to recal his factory, and grant a new one to John Davidson of Carnobie, which was intimated to the tenants in a baron-court, and at the church-door of the parish, and registrated in the books of regality, and thereupon the new factor entered to possess and manage.

In the month of August thereafter, Mr Sedgwick set leases to several persons, particularly to one Story, and to Mr Heddrington, who likewise got right to Story's tack; but the new factor had previous to these set the lands to other tenants; notwithstanding of which, Mr Heddrington warned away the possessors of the lands, and insisted in a removing; in which process Book and Dod compeared in defence of their tenants, and *contended*, that the factory to Sedgwick was revocable, and actually revoked by the factory to Davidson, which being legally intimated, Heddrington and Story were *in mala fide* to contract with Sedgwick, and consequently their tacks were null.

It was *answered* for Heddrington, That the right in the person of Sedgwick was not revocable, because it was a right of property stipulated in the previous articles, and in effect a condition of the tack; that there were irrevocable mandates, where the interest of the mandatar was concerned; and in the present case Mr Sedgwick appeared to have a very valuable one.

*Replied* for the defenders, That in the present question a share in the property of the tack was to be considered separately from the factory; that in law it was essential to all factories, that they are revocable, though granted for a number of years; yea, though it should be expressly stipulated, that the factory should not be revoked, as Voet observes, tit. mand. § 17.; and consequently this factory might be revoked, especially upon malversations and bankruptcy. And father, by the articles of agreement it was provided, 'That all differences were to be determined by the majority,' and the revocation was done by them.

'THE LORDS found, That the factory could be revoked for just causes, and that the publication of the new factory was sufficient, and that the tacks in question depended on the right of the setter, and therefore assoilzied from the removing.

Reporter, *Lord Royston,*

*Act. And. Macdowal.*

*Alt. Ja. Boswell.*

*Fol. Dic. v. 3. p. 200. Edgar, p. 80.*