

the bond of provision to be paid to the daughter at her marriage, was part of the 20,000 merks provided by the contract in liferent to Barbara Scot his spouse; and that it was not the intention of Mr Walter Stewart, that his heir should pay annualrent for the said 6000 merks after the marriage or majority of the daughter, unless Barbara Scot should renounce her liferent of so much of the 20,000 merks as corresponded to the said sum of 6000, and should so disburden the 6000 of her liferent thereof; but found, That Barbara Scot having in the contract of marriage betwixt Mr Colin Maclaurin and Mrs Anne Stewart, only daughter of the marriage, specially consented to Mrs Anne Stewart's assignation of the 6000 merks, and annualrents thereof from Whitsunday 1733 years, that the same was thereby disburdened of Barbara Scot's liferent, and that Barbara Scot had no right to the annualrents of the said 6000 merks.

No 353.

Reporter, *Drummore.*Act. *H. Home.*Alt. *Maitland.*Clérk, *Hall.**D. Falconer, v. 2. No 170. p. 223.*

1763. June 17.

WILLIAM VILANT of Middlefield *against* JOHN BLACKWOOD, Tenant in Middlefield.

JOHN BLACKWOOD succeeded to his father in a nineteen years lease of the lands of Middlefield, which was to expire at Martinmas 1759; and, being desirous of continuing in his farm, he applied to William Vilant, the proprietor, and, upon payment of L. 16, received a letter from him in the following terms: 'Sir, ' In regard you have instantly paid me the sum of L. 16 Sterling, for my granting to you a tack of my lands of Middlefield, for the space of eight years from ' and after Martinmas 1759, I hereby promise to subscribe a tack to you in the ' above terms, in eight days hence; you always being obliged to pay me the ' same rent you pay my mother, who liferents the same. In witness whereof, ' I have wrote and subscribed this at Edinburgh, the 12th day of June 1754 ' years.'

At this time John Blackwood also accepted a bill for the L. 16, which was lodged in the hands of Blackwood's agent, to remain with him until the lease should be extended.

Soon after, a scroll of a tack was drawn and sent to Vilant; but he having *objected*, That inconveniencies might arise, in case his mother, who liferented the lands, should not approve of the lease, another tack was extended, containing this special proviso, That, if the liferentrix would not accede to it, Blackwood's entry should be delayed till the first term of Martinmas after her death.

Mr Vilant having refused to sign this tack, Blackwood brought a process against him before the Court of Session; in which Vilant did not pretend that there was any condition in the bargain, respecting his mother's approbation of

No 354.

A decree *in foro* cannot be reduced, either upon reasons competent and omitted, or upon grounds formerly proposed and repelled;

No 354.

the lease ; but *insisted*, That, by the terms of the letter, Blackwood was to pay double the rent he paid formerly. This defence, which was founded upon these words, ‘ You always being obliged to pay to me the same rent you pay my mother, who liferents the same,’ was, however, over-ruled ; and Blackwood obtained decret in 1755, decerning Vilant to grant a lease for eight years after Martinmas 1759, at the rent then paid for the lands.

Vilant sold the lands in 1759 ; and, being thereafter charged with horning at the instance of Blackwood, he applied to the Court by bill of suspension ; and also executed a reduction of his letter of the 12th of June 1754, and of the decret 1755.

*Pleaded* by the pursuer ; *1mo*, He understood it to be part of the bargain, that Blackwood was to pay double the rent he paid formerly ; *2do*, It was agreed at the time, that Blackwood should take his chance of the liferentrix’s agreeing to the lease ; and, as she refused to consent to it, no tack could be granted during her life ; *3tio*, The lands are worth double the rent which Blackwood paid during the currency of his former tack.

*Answered* for the defender ; *1mo*, The letter granted by the pursuer will not bear the construction put upon it ; and, as it is simple and unconditional, so the defender never agreed to take his hazard of the liferentrix’s consenting to the lease ; *2do*, The value of the farm is greatly over-rated ; at the same time, it is needless to inquire into that circumstance ; for, as the decret 1755 proceeded after a full litigation, the pursuer cannot now pretend to overturn it, either upon allegations that were competent and omitted, or upon arguments that were proponed and repelled.

“ THE LORDS repelled the reasons of reduction, as competent and omitted ; but, in respect the tack could not now be made effectual, remitted to the Lord Ordinary to hear parties, whether damages were due or not ; and to do therein as he should see cause.”

Reporter, *Alemoore*.  
A. W.

Act. *Lockhart*.

Alt. Solicitor *Montgomery*.

Clerk, *Gibson*.

*Fac. Col. No 110. p. 256.*

1766. November 26.

GEORGE BAILLIE of Leys *against* Mrs JEAN ROSS of Hawkhead, and ELIZABETH, COUNTESS of GLASGOW, and their respective HUSBANDS.

No 355.  
Reduction of  
a decree of  
forthcoming.

JOHN BAILLIE, writer to the signet, became jointly bound with John Shaw, in payment of sundry sums to several different persons ; but, as all the sums borrowed were for the behoof of Shaw alone, he, of the date of granting the bonds, also granted a bond to Mr Baillie, for relieving him from payment of any part of the money borrowed.

John Baillie raised letters of inhibition containing arrestments on the bond of relief ; and, in virtue thereof arrested sums far exceeding what he was