

SECT. VI.

Tacks contrived as Security for Debts.

1614. *March.* MR. CHARLES ROLLOCK *against* ———.

No. 104.

A tenant to George Barron of Kinnaird having lent to his Master 1200 merks, upon a bond, to possess his room while he was paid of his soume, with warrant to retain his farms in his own hand, during the not-payment of his soume; the room being thereafter comprised by Mr. Ch. Rollock from Kinnaird, and the tenant being warned to remove from his room, his defence, founded upon that bond of Kinnaird's, was not found relevant.

Fol. Dic. v. 2. p. 423. Haddington MS. No. 2562.

1621. *July 13.* L. MUCKAL *against* HIS TENANTS.

No. 105.

Found in conformity with the above.

In a removing, L. Muckall against his tenants, founded upon his sasine following upon a comprising from Philorth, first heritor of the lands, the Lords found, that a right set by the L. of Philorth to one of the defenders, before the comprising, of a part of the lands, for a certain sum then paid to Philorth, for the which he set to the excipient the said lands, to be instantly entered into, by the receiver of the right, and to be bruikèd ay and while the sum were repaid, and which was clad with possession continually; yet could not defend against Muckall the compriser, albeit it would have defended against Philorth; and therefore repelled the allegiance proponed thereupon.

Act. Peebles.

Alt. Baird.

Clerk, Gibson.

Fol. Dic. v. 2. p. 423. Durie, p. 2.

1621. *December 1.* PARTOUN *against* HIS TENANTS.

No. 106.

Found in conformity with the above.

A three year's tack, bearing this clause, "That forasmuch as I have borrowed from my said tenant the sum of 1000 merks, which I oblige me to repay within the space of the said three years; and if I failzie now as then, and then as now, I am content and consents that he bruik the same lands, ay and while the said sum be repaid;" was found by the Lords to be no tack or real right after the three years, to prejudice the singular successor; and this was so found, albeit the

right was made by John Partoun before his rebellion; and the Lords found that the same could not defend against the donatar. No. 106.

Fol. Dic. v. 2. p. 423. Kerse MS. p. 103.

1624. July 2.

MITCHELSON *against* LAW.

In an action of removing pursued by Mitchelson against Law, the Lords found, a bond made by the pursuer's author, before any right acquired by the pursuer from him to the lands libelled, by the which bond the said author, for sums owing by him to the defender, and which the defender had paid as cautioner for him, had disposed the crop growing upon the ground, the year of that disposition, and also the farms of the lands, in all time and years to come, ay and while he were paid again of the sums wherein he was obliged for him, and conform thereto had put the defender in possession of the corns disposed, then growing upon the ground that crop; not to be a sufficient right to defend against the removing pursued against the defender; albeit it was alleged, that the defender, since the bond, was continually in real possession of the lands, by the space of divers years; and that he was not yet satisfied of the sums addebted to him; because they found, that albeit the bond had contained an express disposition of the lands to have been bruiked ay and while the defender had been paid, (which it bore not, bearing only a disposition of the farms) it could not have defended against the removing, which was pursued by a singular successor, who could not be prejudged in his right by the said bond; but that the same would only furnish action against the giver and maker thereof personally.

Clerk, *Scot.*

Durie, p. 134.

* * Haddington reports this case :

Ane being denounced rebel, his liferent being obtained and declared, a party who had possession of the rebel's land, by virtue of a bond made by the rebel to him to possess the land while he were paid by the profits thereof, of ane particular debt, that bond and possession conform thereto will not defend the possession in a removing pursued by the donatar.

Ane bond given to the Thesaurer by the donatar, that the debt owing to him being paid by the rebel's lands or goods, he still use the gift by the Thesaurer's advice, will not stay the donatar's presentation; but the Lords will reserve action to either party to prove the debt paid, and to make use of the bond given to the Thesaurer as accords of law.

Haddington MS. v. 2. p. 242.

No. 107.

A bond conveying the crop of the ground until a debt be paid, not good against a singular successor.