

No 7. 1628. December 5. OLIPHANT against L. MONORGAN.

IN a pursuit upon a bargain for buying of lands, one of the parties dying before any writ was made, albeit none of the parties resiled therefrom in their lifetimes, and albeit some things were done betwixt the parties, in contemplation of the bargain to have been perfected; yet found the bargain by the death of any one of the parties ceases, and either party hath action, as the law may yield, against those who represent the defunct, for restoring of any thing which their predecessors received from the other, with the party's interest thereby.

Act. *Stuart & Aiton.*

Alt. *Nicolson.*

Clerk, *Hay.*

*Fol. Dic. v. I. p. 560. Durie, p. 406.*

No 8. 1629. January 24. A. against B.

ONE having pursued another for the duty of certain lands set to the defender by the pursuer in tack, for the space of five years, it was *alleged* by the defender, That he possessed not the room that year he was pursued for, but had renounced his tack half a year before, which he might lawfully do, there having no writ intervened between the parties, but the tack being only verbal. Yet because he had possessed three years of the five, the LORDS found he could not renounce for the other two years at his pleasure.

*Fol. Dic. v. I. p. 560. Spottiswood, (TACKS and ASSEDATIONS.) p. 327.*

\* \* \* Auchinleck reports this case :

1629. January 14.—A TENANT having taken a tack five years, by word, and having bruiked the land for the space of three years, renounces his tack *debito tempore* to his master, whilk he will not accept, but pursues for the duty of his tack. The tenant *alleged* he might renounce, likeas he renounced, seeing the tack was but verbal. THE LORDS found he behoved to keep out his tack, in respect the pursuer referred to the tacksman's oath, that he took the tack for five years, and had bruiked the same for three years.

*Auchinleck, MS. p. 232.*

1636. July 16. KEITH against JOHNSTON'S TENANTS.

No 9.  
A party took  
lands for five  
years, of  
which he pos-  
sessed two.

IN a pursuit to labour the ground, conform to a five years tack thereof, set by Alexander Keith to the tenant, and accepted by the tenant, and according whereto he had laboured the room two years of the five, which was referred to his oath; it being questioned, if the tenant might, after he had bruiked the