

ways, but by the express renovation of the same, *nam expressa nocent, et non expressa non nocent*; and as the allegiance was not relevant, alledging that their sub-tenants had paid the greater duty to the ——— and Abbots of Scoon, except they would allege it was by her command, the Lords found, That the exception was relevant, and that, in taking of the last tack, she passes from the first, albeit there was no express renunciation of the first.

*Fol. Dic. v. 2. p. 423. Cobvil MS. p. 416.*

No. 126.

1594. January 13. STEWART against His TENANTS.

In action pursued by Alexander Stewart, servitor to my Lord of St. Colme, against certain tenants of the said Lord, it was found, That a tack set for service was sufficient, albeit it contained no other duty, and that, in a life-rent tack, a man had power to remove tenants, albeit it was not expressed in his tack, and that he having a tack of 8 bolls victual to be uplifted from the tenants, he might remove the tenants, *quod est novum*.

*Fol. Dic. v. 2. p. 423. Haddington MS. No. 473.*

No. 127.

Found, that a life-rent tacksman may remove tenants, although this privilege was not contained in his tack.

1622. February 23. L. STEEL against ———.

L. Steel, as sub-tacksman, having pursued an action of spuilzie of teinds against certain persons, who compeared, and alleged, that he ought to produce, before process could be granted at his instance, his author's tack, for his title, to instruct that he had right to the teinds, without which the sub-tack was not a sufficient title to sustain the pursuit; the Lords repelled the allegiance, and sustained the pursuit upon the sub-tack, the sub-tacksman proving *cum processu*, and producing where the setter of the sub-tack had a tack standing for the years libelled; and found no necessity to produce the said principal tack for the pursuer's title, seeing that the pursuer also offered to prove, that the defender had acknowledged the pursuer's sub-tack, by paying the duty for the said teinds to him divers years preceding the years acclaimed.

Clerk, Gibson.

*Durie, p. 18.*

No. 128.

1629. March 12. L. GALASHIELS against L. MAKERSTON.

In a removing, a tack set by one who was infest in lands was sustained to produce action of removing at the tacksman's instance, albeit it bore not a clause therein of power to in-put and out-put tenants, the tacksman proving, that the

No. 129.

A tacksman may pursue removing.

No. 129. setter was heritor of the lands, especially seeing the defenders had no right to the lands; which was so found, albeit some were of opinion, that such tacks were only obligations, whereby the setter might be compelled to enter the tacksman in possession of the land, but were not real securities, of force to produce removing, and thereby to make warning, being of the nature of personal securities; but most were of another judgment, there being no tack or right in the proponer's person; and found *ut supra*.

Alt. *Nicolson*.

Clerk, *Gibson*.

*Fol. Dic. v. 2. p. 421. Durie, p. 436.*

\* \* Spottiswood reports this case :

In a removing pursued by Gallashiels, younger, against Sir William M'Dowgal, the Lords sustained the action at the pursuer's instance, he having only a tack to the lands from which he craved the defender to be removed, which was neither clothed with possession, nor yet had he power, by virtue of his tack, to remove tenants.

*Spottiswood, p. 327.*

---

1664. June 16. LAIRD OF TOUCH *against* FERGUSON.

No. 130.

Found, that a tack of lands let *with woods* gives the tacksman power to cut only for repairing or building of houses upon the ground, but not for sale, or otherwise to dispose upon it.

The Laird of Touch pursues Alexander Ferguson, his own tenant, for cutting and selling his woods *pro damno et interesse*. It was alleged, That he had a tack of some lands belonging to Touch, with woods, glens, pasturage, for nineteen years, to be possessed as ——— Ferguson, his father, formerly possessed the same;— but so it is, that his father did cut. It was answered, That though the tack was set with woods, &c. yet that gives only power to cut for repairing the houses, or building upon the ground, but not to cut and dispo; likeas the pursuer offered to prove, that so oft as the defender or his father cutted and disposed, to their master's knowledge, he stopped and unlawed them in his courts therefore.

The Lords repelled the allegiance.

1664. June 23.—In another process betwixt Touch and the said Alexander Ferguson and his brother John, the one of them being sub-tenant to the other, he was unlawed at several times for not coming to Touch's courts, being warned thereto; the unlaw *toties quoties* was £.5, and in whole extended to more than £.60. It was alleged, That he being only a sub-tenant, without a tack, is not obliged to compear at the court, unless he were cited at the instance of a party by a complaint or process; and though he were obliged to compear, yet to cite him so often, and to unlaw him so high, is against justice. It was answered, That Touch lying on the borders of the Highlands, he was necessitated frequently to hold courts, for