

possessed as relict of him who was once tacksman, albeit the tack was expired; N^o. 180. which was not sustained to import this conclusion.

Act. *Aiton.*

Alt. *Cheap.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 425. Durie, p. 410.

1629. July 25. MR. ANDREW STIVENSON *against* JOB.

No. 181.

An action was sustained against a tacksman to find caution, or else to remove, albeit there was not a whole year's duty unpaid of the tack, and albeit the ground was laboured, and full plerished: But this was found, because the duty of the tack was a great duty, extending to 5 chalders of victual yearly, and the tacksman was a poor man, who was yearly supplied and helped by the pursuer in furnishing him of means for sowing of the corns, and of money to buy seed wherewith to sow the ground.

Clerk, *Scot.*

Fol. Dic. v. 2. p. 425. Durie, p. 468.

1632. July 10. FISHER *against* TURNBULL, and BALLANTINE *against* BROAD.

No. 182.

The deceased John Turnbull of Symontoun, and Katharine Fisher his spouse, having set a tack of some lands to umquhile Rutherford, and Turnbull his spouse; both the husbands being dead, Katharine Fisher pursues the relict and apparent heir of the tacksman to pay a term's duty, which was owing, and to find caution to pay in time to come, or to remove, as use is. Which action the Lords sustained, albeit there was not yet a whole year owing, but only one term, preceding the summons, and albeit it was offered to be presently paid; in respect the relict, who was pursuer, was a mean woman, who had no more to live upon, and that the relict, who was defender, albeit she was tacksman, seeing the tack was set to her with her husband, yet she had not subscribed the tack, so that she might thereby either labour the land, or leave it waste, as she pleased, and so thereby the pursuer might be disappointed of the tack-duty, and all benefit of the land.

Act. *Stuart.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 425. Durie, p. 642.

* * Auchinleck reports this case :

Katharine Fisher, relict of umquhile William Turnbull, having set a tack, with her husband's consent, to Margaret Turnbull, and Thomas Rutherford her spouse, for the sum of 200 merks, to be paid at two terms in the year, pursues the said