

a tack of the teinds, or to accept of a disposition of lands, it was sufficiently relevant to be proven by the defender's oath, without any writ; and the promise, in the first place, being to procure a tack of the teinds, which in law was obligatory, albeit the other party accept of the right of lands, could not be binding, except writ had intervened; yet the adjection thereof to the first member of the alternative gave the defender only power to resile from that part, in case he thought it better for him to procure a tack to the teinds, than to accept of the heritable right of lands.

The Lords did find, That such a promise being complete, albeit it was alternative, was not at all obligatory to infer that the defender should receive back again a disposition of the lands sold, and refund the price; or to procure a three nineteen years' tack of the teinds; unless it had been put in writ by way of contract or bond.

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1674. *July 7.* MR ALEXANDER LISK *against* GILBERT ROB.

IN a pursuit, for damage and interest, at the instance of Mr Alexander Lisk, upon this ground, That he had set his lands to Gilbert Rob, and he was obliged to enter and possess the same at Whitsunday; and that, after the flitting Friday, he had required him to enter to the possession, and taken instruments upon his refusal:—

It was ALLEGED, That the defender, not being required until five days after the term, and the houses and lands not being made void and red, by the removal of the present tenant, the defender was not obliged to remove from his old room his whole family and goods, having no place to which he might enter.

It was REPLIED, That the defender, being required, was obliged to come to the new room with his family and goods, and then have required the heritor or his tenants, that he might have present possession; otherwise the heritor was not obliged to remove the present tenant, and make his room void: which not being done, the defender is liable for damage and interest.

The Lords did look upon this as a general case; and, after much reasoning amongst themselves, did at last find the defender liable in damage, unless he would offer to prove that he had required the pursuer, after the ordinary day of flitting, to enter him to the possession; or otherwise, that he offered to prove that the heritor had set a new tack: Notwithstanding it was urged, that the removing of a present tenant is necessary in order to the entering of a new; and that the master, being obliged in law to enter the tacksman, he ought to make the room void, and put him in a condition that he might enter. This was hard.

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1674. *July 10.* THOMAS ANDERSON *against* SIR GEORGE PRESTON of VALIE-FIELD.

THOMAS Anderson, as having right to an annualrent out of the lands of Over-toun; whereupon he obtained a decret of pointing of the ground; which being