

1677. *January 16.* CUNNINGHAM *against* HALYBURTON.

No. 186.

The Lords found, That a tacksman of lands, within burgh, may be removed, if he be behind in payment of his duty, unless he find caution as to the future; in the same manner as tacksmen of land in the country.

Reporter, *Forret.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 425. Dirleton, No. 429. p. 212.*

\* \* Stair and Gosford's reports of this case are No. 34. p. 13801. *voce* REMOVING.

1682. *November 7.* MARGARET PHIN *against* JEAN DUNCAN and DAVID PHIN.

No. 187.

Margaret Phin having a wadset right from David Phin of Whitelaw, affected with a back-tack, and the back-tack duty being resting for several years, the said Margaret intended a declarator of the nullity of the back-tack, for not payment of the back-tack duty; wherein there was a conclusion likewise, That Jean Duncan, the relict of the granter of the wadset, and David Phin, his son, may be decerned personally for payment. And this defence being proponed, That there was no irritancy in the back-tack, and therefore the same could not be declared null for not payment of the back-tack duty; and it being replied, That the back-tack was of the nature of a tack, and that it was ordinary to masters to pursue removings against their tenants, albeit there was no irritancy in the tacks, in which case, the tenants will be liable in payment of by-gones, and in finding caution for time coming;—the Lords found, That, by the common law, this declarator might be sustained; and therefore decerned; but superseded extract till Candlemas next, at which time the defenders might purge, by payment of by-gones, and finding caution in time coming.

*P. Falconer, No. 25. p. 13.*

\* \* Harcarse reports this case :

In a declarator of extinction of a back-tack, set by a wadsetter, for not-payment of the back-tack duties for some years,

Alleged for the defender, That there was no irritancy in the back-tack.

The Lords found, That as a tack might be declared void by the act of sederunt, for the not-payment of the duty, unless the tacksman would pay by-gones, and find caution in time coming, so a back-tack, though containing no irritancy, might be declared void; and therefore they declared conform to