

found by many several decisions both of old and of late. The Lords did find, that the tack whereupon declarator was founded being expired after seven years, and the subsequent clause bearing no continuation of the former tack, but a personal obligation to accept of the mails of the tenement in satisfaction of the annual-rent, could not prejudge a singular successor; as likewise, if it had been a continuation of the tack without a certain issue, that it was null, and could not defend against an expired comprising, conform to the many practiques alleged upon.

No. 118.

Gosford MS. p. 418. No. 699.

1679. November 13. SETON against WHITE.

No. 119.

Where a tack contains a definite ish, it is good against singular successors, though the tack-duty be wholly allocated for payment of the annual-rents of a sum owing by the setter to the tacksman.

Fol. Dic. v. 2. p. 422. Fountainhall MS.

* * * This case is No. 19. p. 15137.

1677. December 11. OLIPHANT against CURRIE.

No. 120.

About the tack decided where Craig is cited, p. 205. (Edition 1655.) a tack got for an imaginary duty found not quarrelable *in jure*.

Fountainhall MS. p. 37.

* * * Stair reports this case:

Charles Oliphant pursues James Currie for the mails and duties of the lands of Nether-Mordingtoun and Edrington, being 1300 merks yearly, with two dozen of kain fowls, conform to a tack set by the master of Mordingtoun to the defender; who alleged absolvitor, because by the same tack, albeit it be 1300 merks of tack-duty, yet it is provided and declared, that it should not be due or paid to the master of Mordingtoun, but shall be retained in satisfaction of the like quantity of annual-rent due by the master to the defender. The pursuer answered, That the tack-duty being *per expressum* 1300 merks to be paid yearly and termly to the master, the same was now due to this pursuer as heritor of the lands, being infeft therein in fee by the master's disposition; and albeit the tack contains a clause of retention, yet that is merely personal, and no more than an assignation to the tack-duty, in satisfaction of the annual-rent; yea, though there had been in the tack an express discharge of the tack-duty, which is *debitum annuale*, it would be effectual no longer than the discharger was heritor, which hath been oftentimes found in discharges of feu-duties, that they could reach no further than the discharger had right. The defender replied, That by express act of Parliament in favours of

A tack for definite years bearing a certain sum to be paid for the tacksman's annual-rent, was found valid against a singular successor infeft, there being a small *superplus* of tack-duty.