

No 43.

THE LORDS repelled the defence upon the clause in the tack, and found the clause to be personal, and not effectual against a singular successor, purchasing *bona fide* for a just price: But if the buyer took assignation to the tack, or knew thereof the time of the bargain, the LORDS allowed the parties to be heard upon that point: But seeing tacks are not ordinary in tenements within burgh, as in lands in the country, they found the buyer not obliged to enquire, whether the tenants had tacks, or what they were.

*Fol. Dic. v. 2. p. 66. Stair, v. 2. p. 751.*

\* \* \* Fountainhall reports the same case:

IN a case John Rae against James Finlayson, the following point was debated. There is a tack set in April *per verba de prasenti*, (the tacksman having been in the natural possession as a tenant before,) the entry of the tack is suspended till the separation of the corns from the ground. In July thereafter, which is before the entry of the tack, there intervenes an infestment on a comprising, or a disposition; *Quær.* Whether this will be preferred to the tack or not? If the tack were a consummate tack before the infestment, by attaining possession it would be preferable; but here is difficulty, that though he be in possession before the said infestment, yet it is not by virtue of the said tack. The said tack bore also this clause, that in regard the houses set were ruinous, therefore it should be lawful for the tacksman to repair them, though the reparations exceeded the tack-duty for many years, and he should have retention of his tack-duty till he were reimbursed of his meliorations: *De facto* he wares seven years tack-duty on them. Thereafter, this tack-duty is apprised from the setter, and the appriser pursues for the tack-duty of these seven years. The tacksman opposes the express quality of the tack.—It is *replied*, That clause is only personal against the setter.—*Duplicated*, It is real and incorporated with the tack.—*Triplied*, A clause in a tack to possess ay and until a sum be paid is not real, neither doth it defend against a singular successor; *ergo*, neither will this clause. Many thought it only personal. See TACK.

*Fountainhall, v. 1. p. 95.*

1685. *January.*

SINCLAIR against SINCLAIR.

No 44.

AN appriser having restricted his apprising to certain lands, and the restriction being objected to a singular successor infest upon the apprising; found, That if infestment had followed upon the apprising before restriction, the restriction was but personal; but if it preceded infestment, it did affect and regulate the apprising against the singular successor, because, till infestment, the apprising was transmissible by assignation.

*Fol. Dic. v. 2. p. 64. Harcarse.*

\* \* \* This case is No 62. p. 5324. *voce* HEIR APPARENT.