

No. 231. missary concerned whether his predecessor called his Clerk to a full account for his dues or not?

The Lords found the defence of possession relevant to assoilzie from by-gones preceding the date of this decret; but repelled the said defence as to the emoluments in time coming, and declared accordingly.

*Fol. Dic. v. 2. p. 428. Forbes, p. 640.*

1733. July 19. SIR WILLIAM KER of Greenhead *against* Hog of Harcarse.

No. 232.

Effect of use of payment of a silver duty in name of teind *in cumulo* for a whole estate.

An heritor, who was in use to pay to the titular a silver duty in name of teind *in cumulo* for his whole estate, brought an action against his predecessor's relict, who had a life-rent locality of a part of the lands, as intromitter with the teinds of that part; and the question occurred, Whether she was liable to him for the true worth and value of the teinds, or only for a proportion of the silver duty paid by him to the titular? It was pleaded for the pursuer, That he being in possession of the teinds by tacit relocation, and paying a certain duty to the titular, in place of the *ipsa corpora*, this was a separate subject, which was not disposed to the life-rentrix, and to which, therefore, she could pretend no right, more than if there were a current tack in the pursuer's person. It was answered, That there is a very wide difference betwixt tacit relocation and a standing tack: The last is personal, whoever be the proprietor. Tacit relocation follows the property, and must do so from the very nature of the thing, because it is truly no right or title to the teinds, as a tack is, upon which a claim may be founded for the teind: It is no more but a restriction or limitation upon the titular, in virtue of which the proprietor, who was liable to pay the teind *ipsa corpora*, can free himself, by paying the usual silver duty in place of it. The defender, therefore, who is proprietor of the lands for life, must of course have the benefit of the tacit relocation; and the pursuer, who is not titular of the teinds, nor has any other right in his person to the teinds, can insist in no other shape than as a *negotiorum gestor* for the silver duty he paid to the titular upon her account, and which she was bound to pay, by tacit relocation, in place of the *ipsa corpora*. The Lords found the defender no further liable than for what the pursuer instructs he actually paid to the titular upon account of the life-rent lands. See APPENDIX.

*Fol. Dic. v. 2. p. 429.*

1737. July 26.

ANNUITANTS of the YORK BUILDINGS COMPANY *against* SIR ARCHIBALD GRANT, &c.

No. 233.

Import of a clause in a tack to pay

By a tack which the said Company set to Sir Archibald, &c. the lessees were bound to pay to the Governor and Company a yearly tack duty of £.4000 Ster-