

No. 239. valued jointly. The Lords did find, That albeit the warrant to lead was only for one year, yet it defended against the spuilzie for the next year, there being no inhibition served, seeing he had done diligence, and so could only be liable for a fifth of the valued rent.

Gosford MS. p. 331.

No. 240. 1696. January 17. ANDERSON *against* FORBES.

Where an inhibition of teind was only, in general, against all and sundry, but neither executed personally, nor at any man's dwelling-house, the Lords refused to sustain the same to interrupt *bona fide* possession, in consequence of a right to the teinds in question, obtained *a non domino*, or to make the party a *mala fide* possessor; though it may be sufficient to interrupt tacit relocation.

Fol. Dic. v. 2. p. 429. Fountainhall.

\* \* This case is No. 19. p. 10630. *voce* POSSESSORY JUDGMENT.

1760. November 26.

The PRINCIPAL and MASTERS of the UNITED COLLEGES of ST. SALVATOR and ST. LEONARD, in the UNIVERSITY of ST. ANDREW'S, *against* MR. JAMES MONTGOMERY, Advocate.

No. 241.

Inhibition of teinds executed by a party neither in possession, nor having brought any process for ascertaining his right, is inept.

The Principal and Masters of the College of St. Leonard, and afterwards of the united Colleges of St. Salvator and St. Leonard, in the University of St. Andrew's, were supposed to be patrons of certain parishes in the sheriffdom of Aberdeen, and were in use to set leases of the tithes, receive the rents thereof, and dispose of the vacant stipends of these parishes, from the year 1663 downwards.

The title, however, upon which this possession was founded, having lately been called in question by the Officers of the Crown, and it appearing to be a matter of doubt, whether the right to these teinds did truly belong to the College, or to the King, as in right of the Dean and Chapter of the Archbishoprick of St. Andrew's, the matter was laid before the Lords of the Treasury; and, in the mean time, Mr. James Montgomery, his Majesty's Solicitor for the Tithes, in order to prevent tacit relocation, and interpel the use of payment to the College, raised and executed, at the several churches of the said parish, an inhibition of teinds, at the instance of the Crown, against the heritors.

The Principal and Masters of the College complained of this to the Court of Session; and prayed, That the inhibition might be recalled, reserving to the Officers of the Crown to prosecute the Crown's right, as they should be advised.

Pleaded for the College: Inhibition of teinds can only be used by a proprietor, or one who has a proper title to enter into possession. The Crown can have no such title, in the present case, without first prevailing in a declarator of right; which, however, is not yet brought. And the complainers have been in the lawful possession of these teinds for near a century; which is much more than sufficient to found them in a possessory judgment.

Answered for Mr. Montgomery: The College can have no legal plea to be continued in a possession which has been altogether precarious, and suffered by neglect of the Crown's Officers. The benefit of a possessory judgment must be founded on a proper title; of which there is no vestige in this case. It was the respondent's duty to stop the use of payment, which had been made to the College without any just title; and the proper way of doing this was, by executing an inhibition; Stair, B. 2. Tit. 8. § 23. & B. 4. Tit. 24. § 2.; Erskine, B. 2. Tit. 10. § 21.

“ The Lords recalled the inhibition.”

Act. *J. Craigie,*

Alt. *Montgomery, Garden.*

*I. C.*

*Fol. Dic. v. 4. p. 330. Fac. Coll. No. 250. p. 456.*

Verbal Tack, how far effectual? see *LOCUS PŒNITENTIÆ.*

Irritancy in Tacks; see *IRRITANCY.*

If a Tacksman can subset or assign? see *PERSONAL AND TRANSMISSIBLE.*

If Tacks or Rentals go to Heirs? *IBIDEM.*

What Hazards the Tacksman runs? see *PERICULUM.*

Tack, if good against Recognition, Forfeiture, Ward, &c. see *RECOGNITION, FORFEITURE, WARD.*

Effect of Payment before-hand by Tenants; see *PAYMENT BEFORE-HAND.*

Tack-duty taken payable to a Creditor; see *COMPETITION.*

If the Tenant's Consent to remove will supply Warning? see *REMOVING.*

Removing of Tenants, and Solemnities requisite; see *REMOVING.*

Tacks let by an Heir of Entail; see *TAILZIE.*

Division of Rents between Heir and Executor; see *HERITABLE AND MOVEABLE, and TERM LEGAL AND CONVENTIONAL.*

Tenants, if entitled to a Seat in the Kirk; see *KIRK.*

See *APPENDIX.*