

this country, he must be held as having abandoned his lease; and as the farm remained without a tenant, the landlord was entitled to enter to the possession. No. 194.

Lord Ordinary, Dunsinnan.

Act. Lord Advocate, Hope, Connell, Campbell, jun.

Agent, Ja. Davidson, W. S.

Alt. Solicitor Blair, Wolfe-Murray.

Agent, Robertson & Ainslie, W. S.

Clerk, Home.

J.

Fac. Coll. No. 65. p. 147.

SECT. XIII.

If the Tacksman is bound to produce his Tack in his Master's Court?

1570. December 25. BORTHWICK against LORD ST. JOHN.

In an action of ejection moved by Michael Borthwick against my Lord St. John, for ejection of him furth of certain lands, the said Michael having an year's tack to run; it was answered by the defender, that he did no wrong in ejecting of him, because he lawfully summoned the pursuer, at four lawful courts, to produce the assedation of the lands libelled, who would at none of the said courts produce the same; and therefore the pursuer's assedation was decerned to be null, and the lands to be in the Lord St. John's hands, to be disponed at his pleasure, according to the law and practice of this realm, whereby the superior may recognosce in his own court the lands of his vassal, if he produce not his holding at four courts. It was replied by the pursuer, That the law of the Majesty touching the production of evidents of free tenants cannot be extended to tacks, because it is a law penal, and otherwise therefore might not be extended; and where it was objected, that the defender having a decret for him, could not be decerned to have done wrong before reduction of the decret; it was answered, That the said decret mistered no reduction, because it was given *non a suo judice*; for no superior may be Judge to reduce a nineteen years tack; and also, it was null *quia non erat conformis libello*, because the pursuer was never summoned to see his assedation cassed, and annulled, and albeit, the sentence cassed and annulled the same. The Lords found the defender to have done wrong in ejecting of the pursuer, and that the law touching the production of evidents of freeholders could not be extended to tacks, and the sentence given mistered no reduction, because it was null of the law; *quia non a suo judice lata est et ultra libellata*.

No. 195.

The law relative to this does not apply to tacks.

Fol. Dic. v. 2. p. 426. Maitland MS. p. 204.