

*LOCUS POENITENTIAE.*

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S E C T. I.

Where Writ is necessary.

1567. November 10. CHARTERS *against* M'DUFF.

**I**N an action of removing, moved by William Charters against M'Duff, to flit and remove from a steading that the said pursuer had lately bought in heritage from the heritor thereof, it was excepted by the defender, that he ought not to remove, because the heritor of the said lands had promised to the defender that he should never remove him from the steading during the defender's lifetime; and then the pursuer can have no further right than his author who sold the land to him had, he cannot warn him to remove during his lifetime, at least for the space of an year, because the said promise of a liferent tack may be sufficiently proved by witnesses for the space of an year. THE LORDS repelled the exception, because it was odious to prove an year's tack by witnesses; and therefore, without that he should have alleged that he had promised him an year's tack, they cannot make that the said promise might be comprehended an year's tack, and therefore decerned him to remove.

*Fol. Dic. v. I. p. 560. Maitland, MS. p. 211.*

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1582. May. LORD MONTEITH *against* TENANTS.

THE Earl of Monteith, pupil, and his tutors, obtained a decree against certain tenants, to flit and remove, and desired letters conform to the said decree. Compeared one of the tenants, and *alleged*, That no letters ought to be granted

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**No 1.**

A paction to continue a tack for a course of years, was found only probable *scrip-20*, except for one year.

**No 2.**

A verbal promise not to remove a ten-

**No 2.**  
ant for a year,  
is relevant,  
and therefore  
probable, by  
witnesses.

against him, because the Laird of Fintry, tutor testamentar in the Earl's name, promised faithfully that the said tenant should not flit and remove for the space of an year. The allegiance being found relevant and admitted, it was *alleged* by the Earl's advocate, That the same ought only to be proved by writ; for the decree being in writ, nothing could be proved to take it away *in toto vel in parte*, by other writ *quia nihil tam naturale est quam unumquodque solvi eo genere quo ligatum est*. It was *alleged* by the other party, That the promise of an year's tack might be proved by witnesses; which was found relevant by interlocutor of the Lords.

*Fol. Dic. v. 1. p. 560. Colvil, MS. p. 325.*

1611. June 5.

BAILLIE against SOMERVILLE.

**No 3.**  
It was ob-  
jected against  
a removing,  
that the pur-  
suer had prom-  
ised verbally  
not to re-  
move the de-  
fender for  
two years af-  
ter expiry of  
his tack. The  
promise  
found prob-  
able by wit-  
nesses for  
one year, but  
for the se-  
cond year  
*scripto vel  
juramento  
only.*

WILLIAM BAILLIE in Stanypeth, rentaller of Blackcastle, lying in the barony of Carnwath and sheriffdom of Lanark, summons Margaret Adam, and James Ure, her spouse, and — Somerville, her son of the first husband, to remove therefrom. *Alleged*, No removing, because they bruik the one half thereof by promise of the pursuer not to remove them, and the other half *pro indiviso*. *Replied*, The defender has always acknowledged the pursuer's right of the hail lands libelled, in so far as they have paid him mail and duty for the hail lands. Admits the reply and summons. *2do, Alleged*, The pursuer promised not to remove them for two years after the expiring of the tack, which tack is but lately expired the last Whitsunday 1611. Admits the exception relevant to be proven by witnesses, for bruiking of the lands for one year after the warning, and that it ought to be proven by writ or oath of party for the other year or two.

*Fol. Dic. v. 1. p. 560. Nicolson, MS. No 340. p. 236.*

**No 4.**  
Found in con-  
formity with  
the above.  
In this case,  
the alleged  
promise was,  
not to remove  
the defender  
during life,  
he paying the  
old duty.

1611. June 25.

LOW against LYELL.

JOHN LOW, in Brechin, pursues Thomas Lyell, Provost thereof, to remove from a tenement in Brechin. *Alleged*, The pursuer offered never to remove him during his lifetime, he paying the old duty, *probatum scripto vel juramento partis*.

*Fol. Dic. v. 1. p. 561. Nicolson, MS. between Nos 342. & 343. p. 237.*