No. 125.
tacksman, or kindly tenant, in the King's property, has power to warn and remove, altho' it be not expresssed in the rental.

possessors, to flit and remove from the same. It was answered, That the tack gave him no sufficient title, because it was not expressed in the same, that he had power to in-put and out-put tenants. To the which it was answered, That he libelled the promise to be kindly to him, and his predecessors had been in the peaceable possession of the labouring and occupying of the same. The Lords repelled the exception, and found, That the King's rental in tack was sufficient in itself to warn by, and give action to remove tenants, and the person obtainer of the same to be kindly possessor.

Fol. Dic. v. 2. p. 423. Colvil MS. p. 371.

1586. *February.* KINCRAIGY *against* TENANTS.

No. 126.
An assignee to a life-rent tack was found to have power to out-put and in-put tenants, although the same was not expressed in the tack.

There was a woman called Kincraigy that had a life-rent tack set to her and her umquhile first husband, called Lindsay, of a piece of land of the patrimony of Skoon. Thereafter she made and set another tack of the same lands to her eldest daughter, who, by virtue of the tack, warned the possessors of the ground to flit and remove. It was alleged by the possessors, That the second tack could give no action, because it bore not in it power to out and in-put, nor yet was the acquirer of the tack in possession. *2dly*, Alleged, That the first tack was set to the mother and her husband, and their sub-tenants and cottars, *nam ita canebat*, and so the mother had no power, by reason of her first tack, to set tacks, but to her own sub-tenants. To all this was answered, That as to the first, the tack that was set in life-rent to the wife and her husband, albeit there was not expressed into it power to in-put or out-put, and as the first acquirer of the tack, that was the woman, might not set to others than her sub-tenants, *ut canebat assedatio*, it could not militate in this case, nor take away the tack set to her own daughter, *quia non fuit extrema persona*, but behoved to be presupposed, in like manner as her own sub-tenant that laboured the ground. The Lords repelled the exception, and found, That the second tackswoman had power, by virtue of the same, to warn the tenants, and to in-put and out-put.

Into the same action, and betwixt the same parties, it was alleged, That the woman had no power to set the said tack to her daughter, because the defenders offered them to prove, that the said woman, being married to another husband, Alexander Blair, took another tack of the place of the Skoon, and containing in it a greater duty, and after the decease of her husband, Blair, her sub-tenants, in her name, paid the duties of the same to the Lords of Skeen; and so, consequently, she had *tacite* passed from her tack of life-rent, that she had first, *nam fuerunt hæc incompatabilia* to take a tack of a smaller duty, and thereafter another of a greater duty. To this was answered, presently, at the Bar, partly by reasoning among the Lords, That the pursuer, being once in conjunct tack with her husband, that, after his decease, she could not be denuded, in any manner of

ways, but by the express renovation of the same, *nam expressa nocent, et non expressa non nocent;* and as the allegeance was not relevant, alledging that their sub-tenants had paid the greater duty to the ——— and Abbots of Scoon, except they would allege it was by her command, the Lords found, That the exception was relevant, and that, in taking of the last tack, she passes from the first, albeit there was no express renunciation of the first. No. 126.

Fol. Dic. v. 2. p. 423. Colvil MS. p. 416.

1594. *January* 13. STEWART *against* His TENANTS.

No. 127.
Found, that a life-rent tacksman may remove tenants, although this privilege was not contained in his tack.

In action pursued by Alexander Stewart, servitor to my Lord of St. Colme, against certain tenants of the said Lord, it was found, That a tack set for service was sufficient, albeit it contained no other duty, and that, in a life-rent tack, a man had power to remove tenants, albeit it was not expressed in his tack, and that he having a tack of 8 bolls victual to be uplifted from the tenants, he might remove the tenants, *quod est novum.*

Fol. Dic. v. 2. p. 423. Haddington MS. No. 473.

1622. *February* 23. L. STEEL *against* ———.

No. 128.

L. Steel, as sub-tackman, having pursued an action of spuilzie of teinds against certain persons, who compeared, and alleged, that he ought to produce, before process could be granted at his instance, his author's tack, for his title, to instruct that he had right to the teinds, without which the sub-tack was not a sufficient title to sustain the pursuit; the Lords repelled the allegeance, and sustained the pursuit upon the sub-tack, the sub-tacksman proving *cum processu*, and producing where the setter of the sub-tack had a tack standing for the years libelled; and found no necessity to produce the said principal tack for the pursuer's title, seeing that the pursuer also offered to prove, that the defender had acknowledged the pursuer's sub-tack, by paying the duty for the said teinds to him divers years preceding the years acclaimed.

Clerk, *Gibson.*

Durie, p. 18.

1629. *March* 12. L. GALASHIELS *against* L. MAKERSTON.

No. 129.
A tacksman may pursue removing.

In a removing, a tack set by one who was infeft in lands was sustained to produce action of removing at the tacksman's instance, albeit it bore not a clause therein of power to in-put and out-put tenants, the tacksman proving, that the