

T A C K.

S E C T. I.

Subject-Matter and Nature of Tacks.

1575. June 7. GRANGE DURHAM *against* HIS BROTHER'S RELICT.

The Laird of Grange Durham, in Angus, heir to his umquhile brother, pursued N. Inglis his brother's wife, to remove forth of part of the dwelling place of Grange. The defender alleged, that she should not remove therefrom, because her umquhile husband had disposed and set to her without payment of any mail, the said part of the said place, for all the days of her life-time, and to that effect produced a letter of tack subscribed with his hand. The pursuer alleged, that the letter produced could not save her unremoved, without it had contained a duty yearly to have been paid; therefore, also, it could not be called a disposition, because all dispositions of life-rent given *titulo lucrativo*, require a sasine, which the defender has not, and therefore she should remove: Which allegiance of the pursuer was admitted by the Lords.

Fol. Dic. v. 2. p. 417. Colvil MS. p. 247.

1591. June. MELLERSTAINS *against* HAITLIE.

The Laird of Mellerstains set tack and assedation to one Mark Haitlie of certain husband lands, and there was no certain duty expressed in the tack, but that the said Laird confessed that he had received for the same a great sum of money for certain years, and so discharged the said Mark of the same. It was alleged against the tack, that it could give no action, because it was null of the law, viz. locatio et conductio sine certa mercede; because of the law, sicut pretium est de substantia emptionis et venditionis, ita merces locationis et conductionis, propter duorum con-

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No. 1.

A life-rent tack by a husband to his wife, reduced, because it contained no tack-duty.

No. 2.

A tack, through let sine certa mercede, yet was found to subsist till reduced by way of action, because the

No. 2.
letter had given under his hand, that he had received (not in yearly duty, but *unica contextu*) a great sum for the same from the tacksman.

tractuum similitudinem. Answered, That albeit *merces* was not in this tack conferred into an yearly duty, yet it was paid *unico contextu et una vice*, the which could not take away the action founded upon the tack. The Lords found, that the tack of the same form as it was produced, was sufficient to keep the defender in possession against the setter thereof; and if he would have it to be made null, he behoved to pursue it by way of action.

Fol. Dic. v. 2. p. 418. Colvil MS. p. 460.

1605. July 31.

RESTALRIG against CRAW.

No. 3.
A tack, after loosing of redeemed land, was found not to be null, although it contained no duty, it having been provided by the reversion to be let mail free.

Robert Logan, sometime of Restalrig, pursued one Craw to remove. It was excepted, that the defender had tack for terms to run set by the pursuer. It was replied, That the tack was null, wanting a yearly duty. It was answered, That the tack needed no duty, because the pursuer had set the same expressly mail free, and that it was a tack after redemption provided by the reversion of the lands; and therefore the very grant of the lands redeemed was *loco pretii*, and of the law, *locatio subsistit, sive contineat pretium, sive aliquid loco pretii*. In respect whereof, the Lords admitted the exception and duply instantly verified by production of the tack.

Fol. Dic. v. 2. p. 418. Haddington MS. No. 962.

1610. July 11.

SIR JA. LUNDY against The SMITH of LUNDY.

No. 4.

A contract being made by the Laird of Lundy, whereby he bound him to suffer a Smith to bruik a piece of his land during his life-time, he working the smith-work of Lundy, as well in shoeing of his horses as making and mending the plough's graith, it was found to be a lawful tack; and that his work was *merces locationis*, and sufficient to maintain him in possession against a singular successor, viz. Sir James Sundy.

Fol. Dic. v. 2. p. 418. Haddington MS. No. 1952.

LAIRD OF DALZIEL against WEIRS.

No. 5.

The Laird of Dalziel pursues two Weirs, to whom he had set a room for nine years, to pass a contract thereupon. They entered a servant to keep the goods on the room. Dalziel pursues them for perfecting of the contract anent the nine years tack. They resile. The Lords, in respect of the entry to the possession, ordain them to pay the duty for one year.

Auchinleck MS. p. 230.