

their right is legally put an end to; whereas the representatives of a liferent tenant never have any right to enter into possession. They can derive it only through the tenant, whose right is declared to terminate with his life. They may therefore be summarily ejected as vitious possessors. In the same way, if a liferent tenant was permitted to subset any part of his farm, as the subtenant has a valid title of possession, he cannot be ejected summarily on the death of the tenant, through whom he derives right, but must be duly warned, as if the tenant's right did not determine at his death. The Court had formerly decided the similar case of Udney of Udney against Brown, 1st December 1802, (not reported, see APPENDIX), on these principles; and they therefore refused the petition without answers.

No. 67.

Lord Ordinary, *Polkemmet.**Act. Cathcart, George Jos. Bell.*Agent, *R. Strachan. W. S.*

F.

Fac. Coll. No. 171. p. 261.

SECT. IV.

In what Cases good against Singular Successors?

1553. July 13. LAIRD of B. *against* A POOR BOY.

Whoever has paid grassum to his Laird for certain years, five or three, long or short, conform to the use of the lands, where the grassum is paid, in case the man die before the ish of the tacks permitted for the grassum, his bairns shall bruik the rest of the years that are to run, albeit there be no tacks in write, as was practised betwixt the L. of B. and ane poor boy.

No. 68.

*Maitland MS. L. Hailes's Copy, fol. 44.*1602. January 5. LAIRD of DRUM *against* JAMIESON.

The Laird of Drum, as heritable proprietor of certain lands of the living of Fodderat, warned one Jamieson, occupier thereof, to remove. It was excepted, that the defender had tack of the said lands of one George Gordon, who had a nineteen years tack of the said lands set to him by the Laird of Fodderat, author to the pursuer, being before the pursuer's right; likeas, the said Gordon had another nineteen years tack to begin after the expiring of the first, and a third nineteen years tack to begin at the issue of the former; and all the said tacks were set

No. 69.

A party obtained a tack of teinds, and a second to commence at the expiry of the first, and a third to begin at the

No. 69.
 outrunning of
 the second.
 In a removing
 at the in-
 stance of the
 purchaser of
 the lands, the
 Lords found,
 that the
 tacksman
 could not de-
 fend himself
 by the third
 tack, the se-
 cond not
 being outrun
 at the time of
 the sale.

to him by the Lairds of Fodderat before the heritable right of the lands libelled acquired by the pursuer; and it was of verity, that there were terms to run of the third tack the time of the warning. It was answered, That the allegiance was not relevant, because the third tack whereupon the exception was founded being conferred *in tempus indebitum*; viz. to enter and begin in such a year, at the which time the setter had no right, but was denuded thereof by heritable alienation of the lands by the pursuer's father; the tack in effect was null, and could not have an entry and beginning after that the setter was denuded thereof, and seeing the said three tacks were not in corpore juris nec in uno contextu et scriptura, but were distincta et separata instrumenta;—in respect whereof, the Lords repelled the allegiance, and found that the tack being *scriptura separata* from the preceding tacks; and never taking entry, nor beginning so long as the father's right endured, it could not begin after that the seller was denuded by the heritable alienation of the lands to the pursuer.

Fol. Dic. v. 2. p. 421. Haddington MS. No. 661.

1604. March 7. PRESTON against TENANTS of DUDDINGSTON.

No. 70.
 Found, that
 tenants hav-
 ing tacks for
 terms to run,
 and other
 tacks, the
 entry whereof
 to be at the
 ish of the
 first, may de-
 fend them-
 selves there-
 by, although
 the lessor
 should sell
 the lands be-
 fore the entry
 of the last
 tack, which
 will not there-
 by be reputed
 to be con-
 ferred in *tem-
 pus indebitum*.

Margaret Preston, relict of Mr. Alexander Thomson, pursued the tenants of Duddingston to remove. They excepted, that they had tacks for terms to run set long before the warning, and long before the pursuer's right granted to them by the pursuer's author, and by virtue thereof in continual possession. It was answered, That the exception was irrelevant, unless they would condescend that the entry was appointed before the pursuer's sasine; because, albeit the tacks were set before the pursuer's sasine, yet the entry thereof being appointed to begin at the issue of the former tacks, which was long after the pursuer's sasine, the said tacks were null, being conferred *in tempus indebitum*, the mid impediment of the pursuer's sasine intervening; notwithstanding whereof, the Lords found the exception relevant, and thought that albeit in spiritual men's feus, and tacks set by them, and not taking lawful beginning in their own time, the same were null; yet the like was not in this case, where the setters and receivers were temporal men, and no interruption made of the tacks, which albeit they were not in one body of a tack, yet being so conveyed that none could intervene betwixt the expiring of the one and beginning of the other, they should be reputed but a conjunct tack; and it was more reasonable that he that acquired the last right should seek his warrant than the poor kindly tenant. Some of the Lords remembered of a practick betwixt the young Laird of Bandovie and ———, where the Duke of Lennox, Prior of St. Andrew's, having set a tack of the teinds of Over Bandovie, having given a bond to the said ——— that he should not set any other tack thereof, whereupon inhibition was raised upon the Duke, nevertheless Bandovie obtained a tack thereof from him, and thereby continued his possession; the Lords would not reduce Bandovie's tack upon the said former tack, bond, and inhibition. There was also a tack set by the