

No. 178. 1622. *February 23.* CARNEGIE *against* His TENANT.

In an action pursued by Sir John Carnegie of Ethie against a tenant, who was farmer of some of his lands, without any tack or rental, to hear him decerned to find caution for payment of the farms owing to him of certain bygone years, and in time coming, during his occupation, or else to remove from the lands, so that the pursuer might enter thereto, without peril of ejection, conform to the order observed in such cases which are pursued against persons having tacks of lands; which cause being called, and the defender not compearing, the Clerk of the process advised with the Lords, if they would sustain the process against a farmer sicklike as they used to do against a tacksman. The Lords sustained the action, albeit the defender was a naked farmer, and therefore decerned in that case, albeit it was reasoned by some of the Lords, that this preparative tended to take away all actions of removing, and that thereby none would use a warning against their tenants.

Act. *Aiton.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 425. Durie, p. 18.*

No. 179. 1627. *February 27.* LAWSON *against* SCOT.

In an action betwixt Lawson and Scot, to find caution for payment of four bolls victual and an half, which was the duty contained in a tack of lands set to the defender, or else to remove, as usq is in such cases; the Lords sustained the action; albeit it was libelled, that the defender was only resting owing a year's duty preceding the summons, and that it was not libelled that the ground was unplenished; so that although it was but a small yearly duty which was contained in the tack, and so alleged no necessity to find caution, and that only a year's duty was owing; yet the Lords found, that either caution should be found to pay that duty yearly in time coming, or else that he ought to remove; for the tack-duty being little, it was the more easy to find caution.

Act. *Mowat.*

Alt. *Scot.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 425. Durie, p. 283.*

No. 180. 1628. *December 16.* STRAERLY *against* LUNDIE.

In a pursuit, Straerly against Lundie, to find caution, or else to remove, it was not sustained, being sought against a defender who was not libelled as tacksman of the lands for the duties whereof the caution was craved, but only that she

possessed as relict of him who was once tacksman, albeit the tack was expired; N<sup>o</sup>. 180. which was not sustained to import this conclusion.

Act. *Aiton.*

Alt. *Cheap.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 425. Durie, p. 410.*

1629. July 25. MR. ANDREW STIVENSON *against* JOB.

No. 181.

An action was sustained against a tacksman to find caution, or else to remove, albeit there was not a whole year's duty unpaid of the tack, and albeit the ground was laboured, and full plerished: But this was found, because the duty of the tack was a great duty, extending to 5 chalders of victual yearly, and the tacksman was a poor man, who was yearly supplied and helped by the pursuer in furnishing him of means for sowing of the corns, and of money to buy seed wherewith to sow the ground.

Clerk, *Scot.*

*Fol. Dic. v. 2. p. 425. Durie, p. 468.*

1632. July 10. FISHER *against* TURNBULL, and BALLANTINE *against* BROAD.

No. 182.

The deceased John Turnbull of Symontoun, and Katharine Fisher his spouse, having set a tack of some lands to umquhile Rutherford, and Turnbull his spouse; both the husbands being dead, Katharine Fisher pursues the relict and apparent heir of the tacksman to pay a term's duty, which was owing, and to find caution to pay in time to come, or to remove, as use is. Which action the Lords sustained, albeit there was not yet a whole year owing, but only one term, preceding the summons, and albeit it was offered to be presently paid; in respect the relict, who was pursuer, was a mean woman, who had no more to live upon, and that the relict, who was defender, albeit she was tackswoman, seeing the tack was set to her with her husband, yet she had not subscribed the tack, so that she might thereby either labour the land, or leave it waste, as she pleased, and so thereby the pursuer might be disappointed of the tack-duty, and all benefit of the land.

Act. *Stuart.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 425. Durie, p. 642.*

\* \* Auchinleck reports this case :

Katharine Fisher, relict of umquhile William Turnbull, having set a tack, with her husband's consent, to Margaret Turnbull, and Thomas Rutherford her spouse, for the sum of 200 merks, to be paid at two terms in the year, pursues the said