

possessed as relict of him who was once tacksman, albeit the tack was expired; N^o. 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

- No. 182. Margaret and her son to find caution for the tack-duty, or else to remove. It is excepted, That such action cannot be granted, except where there is a year's duty unpaid by tacksmen; but here the defenders are only owing a term's duty. To which it was replied, That the pursuer is a poor widow, and has no more to live on but this tack-duty; and the defender puts her termly to pursue for her duty; and also the said Margaret has never subscribed the tack, whereby she is obliged to pay the duty. The Lords, in respect of the pursuer's estate, ordained the defender to subscribe the tack, and to find caution, or else to remove; but this decision is not always observed; and not only may the person to whom the back-tack is set be pursued by this sort of action, but also he that comes in the place of the tacksman, either by comprising or alienation of their lands wadset; Mr. Nicol Ballantine *contra* The Laird of Broad.

Auchinleck MS. p. 199.

1633. July 15. WAUGHTON *against* AICKIN.

No. 183.

If a party be owing a part of his duty, although not the whole, to his master, he may be decerned to remove, or find caution, notwithstanding he have a tack.

Auchinleck MS. p. 201.

1667. January 2. EARL of MURRAY *against* JOHN HUME.

No. 184.

The Earl of Murray pursues Hume, his tenant, to find caution for his duties, or else to remove; who alleged, absolutor, because the Earl was debtor to him in a sum exceeding all the bygone rents, and this action hath no place, but when there are some years rent resting. It was answered, That the defender was at the horn, and his escheat taken, and so was manifestly *vergens ad inopiam*.

The Lords would not sustain this member, unless bygones had been owing, but superseded to give answer till the compensation were proved.

Fol. Dic. v. 2. p. 425. Stair, v. 1. p. 422.

1672. January 3. LADY BINNING *against* SINCLAIR.

No. 185.

A process against a tenant to find caution for the mails and duties, or else to remove, was not sustained, unless two terms of the tack-duty were resting unpaid.

Fol. Dic. v. 2. p. 425. Stair. Gosford.

. This case is No. 64. p. 10382. *voce* PERSONAL AND TRANSMISSIBLE: