

No 54.

*annuam prestationem canonis*, and was not for payment of a principal sum, but had *tractum temporis successivum*; and also the back-tack was set by him, who had an heritable infeftment of the land, who by virtue thereof, might have pursued for the whole mails of the land, if the back-tack had not been set.

Clerk, *Scot.**Fol. Dic. v. 2. p. 100. Durie, p. 288.*

\*.\* Spottiswood reports this case:

GEORGE STEWART wadsetter of a tenement in Glasgow, set back-tack again to Fleming heritor, who had given the wadset for payment of L. 10 yearly. He pursued Fleming's heir for the tack-duty *ab anno 1571*. Prescription of 40 being objected, it was found that a yearly duty founded upon an infeftment, was not of the nature of a bond, but that it might be sought for all the years within 40, but not above.

*Spottiswood, p. 235.*

1638. December 15. L. GAIRNTULLY against COMMISSARY of ST ANDREWS.

No 55.  
Found as  
above.

SIR WILLIAM STUART of Gairntully having a pension of L. granted to him by the Duke of LENNOX, and for payment thereof the feu-duties of the lands of \_\_\_\_\_, which pertained in feu to the Commissary of St Andrews, extending to the sum of L. yearly of feu-duty, contained in his feu infeftment, being assigned to him, he pursues the said Commissary for payment of the saids feu-duties, many years bypast, these 40 years or more. And the Commissary *alleging*, That the action was prescribed, he not being pursued therefor these 40 years bypast, and not being sought for the same, the LORDS repelled this allegiance; for they found that this being a pursuit moved for payment of feu-duty, owing by the defender's own charter, he could not be heard competently to propone prescription against the same; but the LORDS thought it expedient, that the pursuer should retrinsh his pursuit to so many years bypast, as might be within these 40 years last bypast.

*Act. Stuart.**Alt. Rollock.**Fol. Dic. v. 2. p. 100. Durie, p. 867.*