

1610. February 16. CRAIGHALL against KINNINMOUTH.

No 118.

A CONTRACT of tack, bearing, that after the expiry of the years of the tack, it shall be leisoime to the setter to enter to the possession of his land, at his own hand, and by his own authority, without process or order of law, whereupon no danger shall follow of spuilzie or ejection, was found to be a sufficient warrant to the setter to enter to his own land, more nor a year after the expiring of the tack, he having done no deed *medio tempore* that might infer approbation of the tenant's possession after the expiring of the tack.

*Fol. Dic. v. 2. p. 338. Haddington, MS. No 1808.*

1617. November 8. ——— against Laird of MONYMUSK.

No 119.

IN an action of ejection, pursued by ——— tacksman to the of Laird Monymusk, *contra* the Laird, the LORDS found an exception, founded upon an act of Court, where he renounced his voluntary removing, qualified as it was proponed, relevant to elide the ejection.

*Kerse, MS. fol. 191.*

1628. February 6. MARGARET CUNINGHAM against PETER McCULLOCH.

No 120.

IN ejections pursued by the relict of ——— an exception of voluntary removing found relevant to be proved, conform to an instruction of voluntary removing, notwithstanding it was replied upon violence.

And in this same process found no ejection for the half of the room, because it was bruiked by tenants.

*Kerse, MS. fol. 191.*

1661. December 18. DEWAR against the Countess of MURRAY.

No 121.

IN an action of ejection and spuilzie, pursued by James Dewar against the Countess of Murray, for alleged ejecting of him furth of the lands of Barnhill, and spuilzieing of his goods furth thereof, it was *alleged*, That the pursuer being tenant and tacksman to the defender, and resting to her certain considerable duties, he gave bond to her for payment of the said duties betwixt and a term, containing a declaration, That if she should not be paid, it should be lawful for her, at Martinmas after the failzie, to use and dispose upon the room at her pleasure; and *per verba de presenti*, he did renounce the tack in

During the currency of a lease, the tenant became bound to pay his arrears at a term certain, and in case of failure to remove summarily. The master found entitled to eject him *bre. vi manu.*

NO 121. case of not payment. Likeas, he having failzied, she did accordingly at Martinmas set the lands to another tenant, which this pursuer has in effect homologated, by accepting a sub-tack of a part from the tacksman. And as to the goods, she intromitted with them by virtue of a disposition thereof, granted by him to her, for security of the said by-run duties. It was *answered*, There was no declarator of the failzie, and she could not enter *brevi manu* without a sentence; and that before Martinmas the pursuer did offer the by-run duties to the defender's factor; and when he took the sub-tack, he protested it was but prejudice of his action against the defender. It was *replied*, That the defender needed not to have declarator, the pursuer having *per expressum* declared, that it should be lawful to the defender, in case of not payment at Martinmas precisely, to use and dispone upon the room; which, if she had not done, it behoved to have lain waste, he having no goods but such as were disposed to the defender: That the offer was long after the term of payment, and did bear no real numeration of money, more or less, but only, that he offered the by-run mails and farms: That there was no consignation used upon the offer, and that the protestation was *contraria facto*, seeing the acceptance of the sub-tack was a clear acknowledgment of the right in the principal tacksman's person.

THE LORDS found the allegiance relevant.

*Fol. Dic. v. 2. p. 338. Gilmour, No 11. p. 9.*

\* \* \* Stair's report of this case is No 6. p. 1816. *voce* BREVI MANU.

1736. February 13.

DICKSON of Kilbucco, and DICKSON of Whitslide, *against* MARGARET TWEEDIE JOHN and JAMES JAMESONS, Tenants in Whitslide.

NO 122.

An intimation or charge previous to the issue of a tack found necessary, although the tenant had obliged himself to remove, without any warning, intimation or charge.  
See No 117.

WHITSLIDE having disposed his estate to Kilbucco in trust, he, with Whitslide's consent, set, for the space of nine years, a lease of the houses and lands of Whitslide to the said tenants, in which they oblige themselves to remove at the expiry of the tack, (Whitsunday 1735) without any warning or legal intimation made to them, or process of law against them; towards the end of this lease, (Kilbucco being denuded of his trust) Whitslide signed a precept of warning, which was said to be executed in common form, against Margaret Tweedie, &c.; as also he raised a horning upon the tack, both in his own and Kilbucco's name; in virtue whereof these tenants were charged, on the 15th day of May 1735, to remove from the said lands, &c. at Whitsunday next to come.

The tenants suspended, and *pleaded*, That they had never received any warning, without which, or an intimation, or charge previous to the term, they were not bound to remove, notwithstanding of the stipulation in the tack; for though the case of tenants bound to remove at the issue of their tack without