

1631. July 22.

LAIRD OF CLACKMANNAN *against* The TENANTS OF BALNAMON.

Tack set for security of annual-rent disposed furth of other lands enduring not redemption, found null, because indefinite, albeit he only was infest in an annual-rent of 1000 merks out of Blebshall, *et in corpore contractus*, tack set of ———, finding the not redemption for payment.

No. 113.

Kerse MS. fol. 104.

1664. June 15.

THOMSON *against* REID.

James Thomson in Cryle having apprised certain tenements in Edinburgh from James Sinclair, pursues James Reid, as one of the possessors, for mails and duties, who alleged that he had bruiked by tack from James Sinclair, before the apprising; which tack bore £.80 of tack-duty, and to continue for seven years, and bore expressly a provision, that the said James Reid should retain the annual-rent of 600 merks addebted to him by Sinclair, as a part of the tack-duty, and that he should not be removed, until the said 600 merks were paid. The pursuer answered, that the allegiance was nowise relevant, to account the payment of the £.80 of tack-duty to the pursuer, out of which the defender could have no retention of his annual-rent, because that is but a personal provision, adjected in the tack, and no part of the tack, and can work no more, than if such a provision had been made out of the tack, in which case it would only have been a part of the tack-duty in compensation of the annual-rent, as an assignation would not be effectual against a singular successor, and would endure no longer than the land was his, who assigned the duties; so now the land ceasing to be Sinclair's, the assignment or allocation thereof, to be retained for satisfaction of the annual-rent, is not relevant against this appriser, no more than that part of the clause, by which the defender is provided, not to remove till his sum be paid, which was never sustained to be effectual against a singular successor. The defender answered, That this defence stood relevant, because the clause of retention is adjected immediately to the tack-duty, and so is as a part thereof, and so is real and effectual against a singular successor; because, if Sinclair had set the tack for a grot, it would have been valid, and therefore might more set it for the satisfaction of the annual-rents, and so much duty further.

The Lords sustained the defence, that seeing there remained a tack-duty, over and above the retention of the annual-rent, and that the tack had a particular ish of seven years, that it was valid; but found the case dubious, if there had been no tack-duty over and above the annual-rent; but that the land had been either set expressly for satisfaction of the annual-rent, or for such a sum equivalent there-

No. 114.

A tack for seven years for a small rent, and allowing the tenant to retain the rest of the tack-duty in lieu of the annual-rent of a sum till the principal was paid, was found valid against singular successors only for seven years.

See No. 118.

No. 114. to, to be retained; in which case the tacks would want a tack-duty to the present heritor; but they found the clause, for not removing till the money was paid, but only to be personal, and not effectual against a singular successor.

Fol. Dic. v. 2. p. 423. Stair, v. 1. p. 198.

* * Gilmour reports this case :

James Thomson compriseth from James Sinclair, merchant in Edinburgh, certain tenements, and obtains decret of mails and duties against the tenants, and namely, against James Reid, gardener, who suspends and intents action of reduction upon this reason, That he hath from the compriser's author a tack for certain terms to run, in which tack he is obliged to pay a tack-duty, and of which tack-duty he has retention *pro tanto* for the annual-rent of 600 merks owing by the compriser's author to him, conform to the tack. To which it was answered, That whatever declaration is contained in the tack anent the retention, it cannot operate against a singular successor, and can only work against the setter so long as he is not denuded, for which some practiques were alleged. Replied, That the tack is anterior to the pursuer's right and clad with possession, and that the defender might have procured a tack for a penny yearly, which would have defended him against any posterior compriser being *bona fide* purchased, and consequently he might as lawfully purchase a tack containing the said declaration, the tack otherwise having all the solemnities and substantials of a tack, viz. entry, ish, and duty; and as to the practiques, none of them do meet.

The Lords found the reason of suspension relevant, and nowise to meet the practiques, for they found the declaration real, and to be more valid than if the tacksmen had had a bond obliging the setter to allow the tack-duty *pro tanto* in payment of the annual-rent, the declaration being subjoined to the clause for payment of the tack-duty, and equivalent as if there had been a clause allowing in the fore-end of the tack-duty such charges as he should ware out in repairing the house.

Gilmour, p. 76.

1665. June 16.

STEVENSON *against* DOBIE:

No. 115.
A tack with either ish or duty ineffectual against singular successors. See No. 104. p. 15234.

Margaret Stevenson having apprised from James Stevenson nine acres of land in Dalkeith, pursues James Dobie for the mails and duties thereof. It was alleged for the defender Dobie, that he having lent to the said James Stevenson 340 merks, he bruiks the said acres by virtue of a tack set by the said James Stevenson to him of the same during the not payment of the said sum, and produces the tack. To which it was answered, that the said tack is null, because it hath no ish, neither hath it any tack-duty, and so is but a personal right, and cannot prejudge a compriser; but, *2do*, The tack is expired, being only for five years, albeit it bear in