

the beginning thereof to be set during the not payment of the money. The Lords found the tack null, and decerned Dobie to make payment. No. 115.

Fol. Dic. v. 2. p. 423. Newbyth MS. p. 29.

*. * Stair and Gilmour's reports of this case are No. 11. p. 1283. *voce* BASE INFERTMENT.

*. * A similar case is reported by Durie, 5th March, 1629, Ley against Kirkwood, No. 26. p. 7195. *voce* IRRITANCY. See APPENDIX.

1666. *January.*

LORD LEE *against* PORTEOUS.

In anno 1612, John Smeitoun of that ilk wadset the lands of Tintoside to Thomas Porteous, under reversion of 2,000 merks, and a three years tack after the loosing, for payment of 100 merks yearly. The Barony of Smeitoun, with the right of this reversion, comes in the person of the Laird of Lamingtoun, who dispones the same to the Lord Lee, who uses an order of redemption, and pursues a declarator, having consigned the 2,000 merks, and produced the same at the Bar. It was alleged for the defender, That there could be no declarator, unless a three years tack were also produced conform to the reversion. Answered, That by the 19th Act, 6th Parl. King James II. it is statuted, That tacks of wadset lands set after redemption, for half meal, or nearly, should not be kept, unless they were set for the very meal or worth of the lands, or nearly the same; but so it is, that this tack is appointed to be set for 100 merks, the lands being worth 300 merks or nearly; and the time of the wadset, when the money was at ten *per cent*, they could not be less than the annual-rent of the money then lent, which was 2,000 merks, and consequently they behoved to be at least 200 merks yearly, and therefore the tack is null; *2do*, By the late act of Parliament betwixt debtor and creditor, it is appointed, that the creditor having a proper wadset, and getting security for the annual-rent during the not redemption, he shall either quit the possession, or otherwise if he please to possess, he shall be comptable for the superplus duties more than pays the ordinary annual-rent; and therefore, when the creditor is, by redemption, paid of his principal sum, so that no more annual-rent is to be due, he should have no more use nor advantage of the lands and yearly duties thereof; and therefore *a paritate rationis*, the tack becomes null. To the first it was replied, That the act of Parliament has been in continual desuetude, and tacks of this nature, after the loosing, were always kept and consigned the time of the redemption, as may be instructed in divers cases. It was duplied, That where the law stands clear, no desuetude can be alleged against the same, unless it can be made appear, that this objection has been made against such tacks, and has been repelled.

No. 116.

A tack to take place after redemption of a wadset found null.

No. 116. Answered, That such tacks were never controverted, and so never objected against ; and who can know after so long a time, whether or not objections were founded against the said act, and what the reason has been to repel them, if they have been proponed ; whether the act was interpreted to extend only to wadsets and tacks dated before the act, and not to after wadsets and transactions ? To the second, answered, That the act betwixt debtor and creditor speaks nothing of the case of a tack after loosing, and so cannot be extended *a paritate rationis*.

The Lords found the tack null upon the act King James the Second, though some were of the judgment it should have been found not upon that act, but upon the late act betwixt debtor and creditor.

Gilmour, No. 182. p. 132.

1673. July 8.

MONTGOMERY *against* PARISHIONERS OF KIRK-MICHAEL.

No. 117.
Sub-tacks of teinds granted to heritors by the principal tacksmen, for sums received, for five years, and till the sums were repaid, were found null as to singular successors for all years after the first five.

The Bishop of Galloway having set the teinds of Kirk-Michael to Neil Montgomery of Langshaw, he sets sub-tacks to several of the heritors, bearing special sums received, for which he sets their teinds, one of them for five years, and thereafter during the non-payment of that sum, and the tack-duty is the annual-rent of the sum ; the other is for three years, and from three years to three years during the non-payment of the sum . Neil Montgomery, son to Longshaw, having right by apprising, pursues the heritors for their teinds. They except upon the tacks. The pursuer replied, That the tacks were null, except as to the first five years, or three years, long since past, because they wanted a determinate ish, which is an essential of a tack ; and it hath been oftentimes decided, that tacks of lands to endure till a sum were paid, were null as to singular successors. It was duplied, That decisions had not been constant in this point, even as to lands, but the case was far different as to teinds ; for lands requiring for their right infestment, it was against the interest both of superiors and purchasers, that tacks for sums ay and while they be paid, should be valid rights, which could be found in no register ; and therefore the motive of that custom is, that tacks might not be perpetuated ; but teinds being rights, and tacks thereof being rights that require no infestment, but are assignable, and any words expressing a communication of the right, if it were but a general disposition of all right of land and teind, it would carry the right of the tack, if it were clad with possession ; and in the same manner in a tack of life-rent that requires no infestment, but especially in the case of a sub-tack, which cannot be a perpetual right, because it is determined with the ish of the principal tack, and if it were an assignation to the principal tack, it would be unquestionably good.

The Lords found the tacks null as wanting an ish.

Fol. Dic. v. 2. p. 423. Stair, v. 2. p. 206.