

such a duty in money for so many years, with a clause retaining the annual-rent out of the tack-duty, and not to be removed till the principal was paid, the Lords sustained the tack against the apprising, as to the definite years and retention, seeing there remained a *superplus* of the tack-duty, but not as to the clause not to remove, &c. which they found personal; and a tack of seven years for four pennies yearly, and discharging the annual-rent of a sum till the principal was paid, was sustained against singular successors for the seven years, No. 118. p. 15244.— The Lords found, that Currie's tack having a definite ish of nineteen years, a retention of the annual-rent, and a remaining *superplus* duty, that the same was valid against the singular successor by infertment, and that the defender was obliged to pay no more to him than his author, viz. the *superplus*, the two dozen of fowls, the relief of teind and public burden.

No. 120.

*Fol. Dic. v. 2. p. 422. Stair, v. 2. p. 574.*

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1682. January. SIR ALEXANDER HUME against MR. PATRICK, his Brother.

No. 121.

The Lord Renton having, for payment of his debt, set a tack of his whole lands and casualties, to Sir Patrick Hume his son, reserving the kain fowls to his Lady and his son Sir Alexander, the apparent heir; after his lady's decease Sir Alexander claimed the whole kains *jure accrescendi*, his mother and he being *nomine et re conjuncti* in the clause of reservation.

Answered for Sir Patrick: By the civil law *jus accrescendi* took no place in contracts *inter vivos*.

The Lords waved the point of *jus accrescendi*; but found, That the kain fowls did not fall under Sir Patrick's tack; and therefore belonged to the heir.

*Harcarse, No. 949. p. 267.*

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1698. February 10.

COCKBURN, DARLING, and other Creditors of MR. THOMAS DUNCE of Reveldykes, against ROBERT SAMPSON.

No. 122.

In a competition between Cockburn, Darling, and other creditors of Mr. Thomas Dunce of Reveldykes, who being resting to Robert Sampson 400 merks, he give him a tack of some acres; against which the other objected, that it was null, being only a personal obligation, and assignation to the rents ay and while he were paid of his money, which never stood against singular successors, and wanted all the essentials of a true tack, (which, by the 18th act 1449, is declared a real right,) neither having tack duty nor ish. Answered, The tack was formal; seeing it expired on payment of the sum, which was its termination; and had a shearer and teinds paid yearly for a tack-duty. The Lords considered the pay-

Found in conformity with No. 120. *supra*.