

1696. July 15.

MARGARET LUMSDIN, Relict of Robert Bell, Writer to the Signet, *against* HOME of Linthill, MARY HAY, Relict of Nisbet, ROCHEAD, and WHITSOMHILL.

THE point was about the import of a tack of teinds fet by a minister during his life, and for _____ years thereafter; which the tackfman contended, ought to be expounded *in terminis juris*, and so filled up by the Lords *tanquam boni viri*, and conform to the meaning of parties; and by the acts of Parliament, a benefited person may set tacks not only during his life, but also for five years thereafter, if with the consent of the patron, by act 5th Parl. 1617; for *quod inesse debet inesse præsumitur*: And lawyers say, *quæ sunt usus et consuetudinis veniunt in contractibus bonæ fidei, et interpretatio faciendâ est ut actus potius valeat quam pereat*; and though this seems to make it without a definite ish, yet this may be defined either *per se, vel relatione ad aliud*, as here parties are presumed to have had an eye to the law; and it being 'years' in the plural, that must be two at least; according to the rule in the common law, *locutio pluralis duorum numero contenta est*.—*Answered*, That tacks are *stricti juris*, and not to be extended beyond their precise words; and the incumbent *non fecit quod potuit*, and blank years is *no* years.—THE LORDS finding the blank was scored, they thought the same could not be now supplied nor filled up; and therefore found the tack expired with the death of the fetter.

Reporter, Crocerig.

Fol. Dic. v. 1. p. 52. Fount. v. 1. p. 728.

1732. February. LADY MONKTON *against* BALDERSTON.

A TACK being fet to a man, his heirs, and sub-tenants, whom the fetter should be content with and accept of allenary, including his assignees; and the tackfman having made a sub-fet without the heritor's concurrence, the question occurred, What was the import of the above clause, whether it entitled him arbitrarily to withhold his consent; or if he was obliged to give reasons for his dissent, to be judged of *secundum arbitrium boni viri*? This debated but not ultimately determined.

Fol. Dic. v. 1. p. 53.

1734. February 19. CORSON *against* MAXWELL of Barn.

A GENTLEMAN having given a bond of provision to his sister for 3000 merks, took a back bond from her, importing, 'That it being rather too great for his circumstances, therefore she consented that the same should be mitigated by friends to be chosen *hinc inde*, her mother being always one.' After the mo-

VOL. II.

4 Q

No 5.

A tack of teinds was granted for life, and blank years thereafter. The blank was scored, and the Lords did not fill it up, but found the tack expired.

No 6.

Whether a landlord, who had agreed to receive such sub-tenants as he should be content with, was entitled to refuse entirely and arbitrarily?

No 7.

A back-bond was granted, agreeing to mitigate a bond of provision at the sight of