

tacks, or even the verbal set for a term of years, can never have any effect, although offered to be proved by the parties' oaths; Keith, No. 9. p. 8400. *voce* LOCUS PŒNITENTIÆ; Skene, No. 10. p. 8401. *voce* LOCUS PŒNITENTIÆ. Nor is there any difference betwixt an heritor's paction or promise to continue or prolong a tack for a term of years to the former tacksman, and a paction or promise that he should not remove the tacksman after the determination of a tack current. This at least is obvious, that both have the same effect; and it is a fair consequence, that where the effects of both are the same with respect to the master and tenant, both ought to be governed by the same rules in law; that is, that such pactions ought to be established by writ, according to the usual solemnities; and wherever writing is to be interposed, there is *locus pœnitentiæ* before the same is subscribed.

The Lords found the reason of suspension not relevant to oblige the charger not to remove the suspender for more than one year after the ish thereof; and it not being denied by the suspender, though alleged by the charger, that the suspender has had allowance to possess two years since the ish of the tack, found there was no need of any proof of the agreement mentioned in this reason of suspension, the same being already sufficiently implemented as far as it was obligatory; and therefore repelled the reason of suspension.

Fol. Dic. v. 4. p. 322. C. Home, No. 187. p. 311.

1750. February 8. GARIOCH against FORBES.

Alexander Garioch of Kinsterey, purchaser of the lands of Lesmore, from Gordon of Wardhouse, pursued a removing against Alexander Forbes, possessor of a part of the lands, who defended himself, upon an agreement between him and Wardhouse, the pursuer's author, which had been executed by two missives, one by Wardhouse, bearing, that Forbes was to have a tack for 19 years, the other from Forbes, accepting the offer. This was sustained against the singular successor; who was found liable in the tenant's expense for disputing it, which he did on the ground, that this was no tack, but only an obligation to grant one, and that such obligations are not effectual against singular successors.

Fol. Dic. v. 4. p. 322. Kilkerran, No. 9. p. 537.

1753. March 6. WILLIAM BARRON against THOMAS DUNCAN.

Barron granted a subset of certain lands to Duncan, for five years. The agreement was executed by mutual missive letters betwixt them, which were written by a third party; and Duncan entered into the possession of the lands, and possessed the same for one year.

No. 23.

No. 24.
Obligation to grant a tack, if effectual against singular successors?

No. 25.