

APPENDIX

PART I.

TACK.

1757. *July 23.*

JAMES CAMPBELL, Goldsmith in Edinburgh, *against* GEORGE CARRUTHERS,
Tenant in Longboddom.

No. 1.

Compensation upon rents, how it operates against a debt due to a tenant?

IN 1718, James Graham let a tack of the half of his lands of Lognboddom for twenty-one years, at the rent of 300 merks, to his brother Captain William Graham; who, in 1723, assigned the same to William Carruthers; and, at the date of the assignation, Longboddom gave an heritable bond to William Carruthers for 4200 merks, payable at the term of Whitsunday 1739, when the tack was to expire, with an obligation to infest in an annualrent of 210 merks out of the above lands, redeemable at the said term; declaring, "That it should be lawful to Carruthers, to retain the said yearly annualrent of 210 merks out of the first and readiest of the said tack-duty." This tack and heritable bond were thereafter assigned to George Carruthers the defender.

Longboddom's affairs having gone into disorder, his estate was sold by trustees for his creditors, in 1732, to Edward Cutler; who objected to the sale on account of incumbrances, and, in the mean time, declined to receive payment from the defender of the superplus tack-duty over his annualrents. These disputes continued many years with Edward Cutler, and James Campbell, his representative. At last, in 1752, Mr. Campbell was found liable in payment of the price and annualrents; and in the after decree of ranking of Longboddom's creditors, George Carruthers was ranked for the principal sum of 4200 merks due to him by the above heritable bond.

The purchaser insisted, That the superplus of the tack-duty over the annualrents, being a clear liquid debt due by him, ought to be imputed yearly, as they fell due, in extinction of the principal sum of 4200 merks, and another personal debt due to him by Longboddom.

"The Lords (28th February 1756,) found, That the superplus rents owing by George Carruthers, after deducting the annualrents of the debts in his person, ought to be yearly applied in extinction of the said debts."

No. 1. Plead in a reclaiming petition for George Carruthers: That by the clause in the heritable bond, the tenant was allowed to retain the annualrents out of the tack-duty; but he could not retain the superplus rent for payment of the principal sum, which was not due till the expiry of the tack: And as he could not plead compensation, or pretend to retain the rents for payment of his principal sum, it can as little be competent to the heritor or purchaser to plead it against him. Compensation must in all cases be mutual, and competent to both parties, or neither. The tenant was bound to pay the superplus of his rent upon demand, without compensating or retaining; and it would be unjust to make him pay interest for such sums, which he was bound to have ready on demand, or to impute them yearly in extinction of his heritable bond, which is equal to making him pay interest for the same.

Answered for James Campbell: That the clause allowing the tenant to retain his rent for payment of the annualrents, would have been implied, though not expressed, and cannot infer a passing from compensation *quoad ultra*: And in all cases where two debts concur, though one of them bears no interest, yet compensation operates *retro*, so as to stop the interest upon the other debt from the time of the concurrence.

“ The Lords found, That the superplus rents, after deduction of the annualrents due to the petitioner, can only apply in extinction of the debts in his person, as at the date of the decree of ranking.” See No. 8. p. 2551.

Act. Pringle, Lockhart.

Alt. Brown, Ferguson.

W. J.

Fac. Coll. No. 45. p. 73.

1776. December 19.

PROVOST WILLIAM GORDON *against* ALEXANDER and ISOBEL FORSYTHS.

No. 2.

What to be understood to amount to a renunciation of a tack.

PROVOST WILLIAM GORDON purchased the lands of Greishop from Lord Fife, who had bought them along with the estate of Brodie at a judicial sale of that estate. One particular inducement to the purchase was, that there was a part of the lands burdened with no lease, and very improveable. This farm had formerly been possessed by one William Forsyth upon a letter of tack from Mr. Brodie. This man had died in bad circumstances, and his eldest son Alexander granted a renunciation of the tack to Mr. Reid, Lord Fife's factor, conceived in the following terms: “ Since I saw you at Innes, I have considered the proposal then made of giving up my father's possession to my brother John, and now have altered my sentiments entirely in that respect, as I find, that he who has no stock is quite incapable of plenishing or labouring it, and by his contracting so much debt as he behoved to do to plenish it, he certainly would so insolve himself as to be a prey to some de-