who called Sir James Colquhoun in an action of relief against Frasers' demand. The Lord Ordinary found the representative of Arbuthnot liable in the comprised value of the dikes; but, in respect there is no obligation in the tack to build the dikes, and that the obligation to pay depended on an uncertain event, and that there was no mention therein of assignees, assoilzied Sir James Colquhoun. The Lords, however, altered this interlocutor, and held the clause effectual against a singular successor, finding Sir James Colquhoun liable in payment. No. 87.

Fol. Dic. v. 4. p. 327. Fac. Coll.

*** This case is No. 103. p. 10424. *voce* PERSONAL AND TRANSMISSIBLE.

1774. *November* 16.

HUGH GORDON *against* JAMES LORD FORBES and JONATHAN FORBES of Brux.

No. 88.
Whether a tack of services prestable by tenants, when clothed with possession, is an effectual right against singular successors in the lands?

In 1755, the Lady-Dowager of Forbes, who then life-rented the whole estate of Forbes, set to Hugh Gordon, during her life, "the Mains of Castle-Forbes, with the houses, yards, and hail righteous privileges thereof, and services, as presently annexed thereto, and possessed by Robert Milner, tacksman thereof."

These services, described in the foregoing tack, by a general reference to the possession had by Robert Milner, consisted of the services of sixty men yearly, one day to the fold-dike, forty-two hooks in harvest, twenty-eight men for gleaning corn, forty-two for dunging the lands, fourteen for harrowing, and eighty-four horses for harrowing and dunging corn.

Lady Forbes having acquired the property of the estate of Forbes, it was purchased from her by Dr. Gregory, who sold it out in different parcels. In particular, several farms in the parish of Forbes were bought by Lord Forbes, and two farms in a different parish by Mr. Forbes of Brux; and the Mains of Forbes, the pursuer's farm, became the property of another purchaser.

By the dispositions granted to them, the defenders were taken bound, in the usual way, to maintain the subsisting tacks upon the different farms which they had respectively purchased.

By the tacks which subsisted at the time of the sale, the tenants of some of the farms bought by the defenders were bound to perform the services above-mentioned to the Mains of Castle-Forbes during all the years of their different tacks; and, accordingly, while these tacks subsisted, these services were regularly performed by the tenants; but when Lord Forbes and Mr. Forbes of Brux were entering into new leases, to take place upon the termination of the former, they considered themselves as laid under no obligation, by the dispositions, to take their new tenants bound to perform those services, and accordingly resolved to discontinue them.

No. 88. Hugh Gordon thereupon brought the present action against Lady-Dowager Forbes and the defenders, concluding, that they should be ordained, by decree of this Court, to cause their tenants perform the services libelled during the currency of the pursuer's lease; that is, during the life-time of the Lady Forbes, the granter; or otherwise shall be accountable for the yearly value thereof.

The Lord Ordinary decerned against Lady Forbes in terms of the libel; in which she acquiesced.

As to the other defenders, pleaded for the pursuers: When a person purchases land, there are two things which he is bound to inquire about; 1*st*, The heritable infeftments thereon, which are notified by the public records; and, 2*dly*, How far the same are affected or burdened in any shape, by subsisting tacks clothed with possession, which possession, being a fact of public notoriety, may be easily known to any purchaser who gives himself the trouble to make the proper inquiries. The pursuer, indeed, is informed, that the defenders were well acquainted with the particulars of his lease at the time of their purchase; and if, with their eyes open, they bought lands subject to a tack of certain services, wherein the tacksman was in possession at the very time when they made the purchase, they surely can have no right to complain that the tack should be made effectual against them, as they must be understood to have made the bargain, and to have settled the price with a view to that incumbrance. The defenders themselves, indeed, seem to give up the point, when they admit that the services in question were exigible from their tenants during the currency of the tacks which existed at the time of the sale.

2*dly*, As the pursuer's lease from Lady Forbes undoubtedly comprehends the services in question, and as she must, in all events, be bound to warrant these services to him during the currency of his tack, this, of itself, affords a solid answer to the defender's plea. It is a rule established in law, that, except in the case of latent burdens, which were unknown at the time of the bargain, a purchaser is not at liberty to insist in any ground of challenge which will infer a claim of warrandice against his author. A person who buys a subject is understood to accept of it, *tantum et tale*, as it stood in the person of the seller, subject to all the burdens and defects which were known to him at the time.

Answered: The act 1449 directs, that tacks should be good against singular successors for their whole endurance, and at the rent for which they were taken. The meaning of this law is, that a purchaser cannot turn out the tenants, but must allow them to possess their farms upon the conditions contained in their tacks. The present case is exceedingly different, because the services in question are not stipulations in favours of the tenants upon the farms purchased by the defenders, but, on the contrary, are heavy burdens imposed on them in favours of a stranger, and from which they would be happy to be relieved; and this question, therefore, falls to be determined by very different principles.

No. 88.

2dly, A purchaser must not involve his author in warrandice to the tenants of the farms sold to him, in matters that are either contained in tacks, or understood in law; but he has certainly nothing to do with regard to the seller's obligations or warrandice with the tenant of a farm he has not purchased, no more than with any obligation he may lie under to any other extraneous person. Lady Forbes is no doubt liable in warrandice to the pursuer; and she has submitted to it, as she has not defended herself against this action; and as he is safe, there can be no occasion for insisting against the defenders. They saw, by the tacks of the farms they had purchased, that their tenants were bound to perform the services in question during the currency of their leases; and they have submitted to that heavy burden. They had no occasion to make any inquiries about the pursuer's tack, or what bargain might subsist between him and Lady Forbes. The continuance of these burdens upon the farms they purchased, during Lady Forbes's life, was a latent burden *quoad* them; and as that Lady did not think it expedient to entail these oppressive services upon the farms she was to sell, it is clear the defenders must be assoilzied from this process, leaving it to the pursuer to obtain relief from her Ladyship's warrandice, which is indisputably good, and for which he has already obtained decree.

The Lords "sustained the defence, and assoilzied the defenders."

Act. *Blair.* Alt. *P. Murray.* Clerk, *Ross.*

Fol. Dic. v. 4. *p.* 323. *Fac. Coll. No.* 187. *p.* 362.

1785. *November* 30. WILLIAM CAMPBELL *against* ROBERT SILLER.

No. 89.
A lease having been granted of lands which were sequestrated after its date, but before the term of entry, the lessee found entitled to require possession, in implement of the contract.

Sir Thomas Wallace, in 1775, granted to Siller, at a high rent, a lease of a farm, for ninety-nine years, to commence in 1780. In 1778, the creditors of the landlord, some of whom had obtained heritable securities, brought a process of sale of his estate, which was then laid under sequestration. Afterwards, Siller was admitted into possession by the judicial factor, who for several years had continued to receive the rents from him, when an action of reduction of the lease was raised by Mr. Campell, the purchaser, who

Pleaded: Before the term of entry by this lease, the landlord was divested of the administration of his estate. His creditors, already infeft in it, had attained possession by the factor under the sequestration; a thing declared by the uniform style of the judicial proceedings. Now, as a tack not clothed with possession is not effectual against a purchaser whose right has been completed, it must, in the present instance, be equally unavailing, either against the creditors, or against the pursuer, as coming in their place. Such, accordingly, was the decision in the case of Lord Cranston's Creditors *contra* Scott, No. 84. p. 15218.

Nay, though the creditors had been uninfeft, their adjudications alone would be the title of possession by their factor; an effectual right being thus constituted, exclusive of subsequent possession under any lease. If, indeed, the factor has