

W A D S E T.

1567. February 25. DALRYMPLE against KENNEDY.

ANENT the action pursued by Janet Dalrymple, and John Brown, her spouse, for his interest, against William Kennedy, for succeeding in the *vice* and violence of certain tenants warned to remove from certain lands pertaining to the said Janet in heritage, and a decreet given thereupon against the said tenants, in whose *vice* the said William succeeds: It was answered by the said William Kennedy, that by nowise he should be decerned to succeed in the *vice*, because the said lands were annalzi'd by the pursuer to others under reversion; and long ere the said lands were redeemed by the pursuer, the said defender obtained tacks thereof from the heritable possessor of the same, of the whilk there are yet terms to run, and therethrough in the possession of the said lands; likeas he is yet in tilling and sowing, occupying and labouring with his own proper goods a part of the said lands; and so he being in possession as said is, by a title, and not warned lawfully to remove therefrom, can nowise succeed in the said *vice*. It was alleged by the said pursuer, as to the said tack, the setter thereof had no power to set the same tack, because there are no tacks contained in the said reversion, and so was not obliged to keep the said tack, but to enter freely to the said lands, after the redemption thereof; which was found relevant, and found by interlocutor, that no heritable possessor having lands under reversion, may set any tacks of the same, except there be tacks expressed in the reversion for certain years after the redemption, and but for so many years, and no more; so that the redeemer of the said lands is not obliged to keep the tacks otherwise, but after the redemption to pass freely to the said lands, notwithstanding the said tacks, as said is; and wherefore it is alleged by the defender, that he is in possession of the said lands, and not lawfully warned to remove therefrom; it was alleged by the pursuer, that that was direct contrary to the libel, which libelled that the tenants against whom the pursuer has gotten a decreet, in whose *vice* the said defender succeeds, were in possession of the hail lands libelled by tilling, sowing, manuring, and occupying at their pleasure the time of said warning, and therefore it was not needful to warn the said defender, for the cause foresaid; which allegiance of the pursuer was admitted by the Lords, and the libel admitted to the pursuer's probation.

No. I.

A wadsetter cannot let tacks to endure longer than his own right.

Maitland MS. p. 96. (Second copy.)