

No 15. thereof, against him. The pursuer *tripled* upon his libel and decret of perambulation, and alleged a practice betwixt Trakommy and Thomas Kerr of Cavers, when a decret of molestation, given after the defenders of a contravention, was drawn back, and admitted to sustain the contravention, committed before the intending of the molestation. THE LORDS having exactly reasoned the matter, and considered the molestation was *judicium possessorum*, and perambulation were *petitorum*; yet because the pursuer and defender were alike stark in qualification of their right and possession in the libel and exception, nevertheless, the pursuer replying upon his decret of perambulation, which made him to have undoubted right, and the defender to have no right to the lands controverted, they admitted the libel and reply to probation.

Fol. Dic. v. 2. p. 303. Haddington, MS. No 1715.

1612. February 12. MUNRO against INNES.

No 16.

MUNRO, brother to the Guidman of Tarrell, assignee constituted by my Lord of Kinloss, to a tack of certain teinds, pursued the possessors for spuilzie. They *excepted*, That the assignation could give no action, the tack not being produced. It was found by the Lords, that the assignation was sufficient to instruct, the pursuer proving his author's tack *cum processu*.

Fol. Dic. v. 2. p. 302. Haddington, MS. No 2399.

1622. February 23.

Sir JAMES CLELAND against The TENANTS of ARBUCKLE.

No 17.

Found, that a sub tacksman, pursuer of a spuilzie of teinds, may produce the principal tack *cum processu*.

SIR JAMES, as assignee by Margaret Ker, to sub-tack of the teinds of Arbuckle, set to her for lifetime by Hamilton of Rosehalloch, her son, principal tacksman, serves inhibition, and pursues spuilzie of the crop 1620. *Alleged*, No process on the sub-tack produced, while it be shown, where the setter of the sub-tack had right himself, and his principal tack produced, and was decided betwixt the Earl Lothian and Captain Crawford. *Replied*, Offers to prove *cum processu*, that the granter of the sub-tack had tack for years to run set to him, which the pursuer could not now show, the same not being his evident. Repel the allegiance, in respect of the reply, that the principal tacksman has tacks for years to run.

1622. March 14.—*Alleged*, The defenders have tack from the pursuer's cedent of the lands libelled, by the which the cedent has obliged her to warrant

to the excipients both stock and teind; likewise the pursuer has, by his back-bond the time of the making of the assignation, bound him to make payment of the equal half of such as he shall receive, and so implies a manifest collusion against the statute, and a lawful creditor. *Replied*; Repels; because the tack can only produce to them warrandice against the setter; and, for the back-bond, it makes the assignation true, and the more onerous; and the most they can object thereon is for one half, and there is no collusion, and they show not themselves creditors. Find the exception relevant for the one half of the quantity, and admit the summons to probation for the whole.

No 17.

*Cunningham, Hamilton.**Stewart, Lawrie.**Fol. Dic. v. 2. p. 302. Nicolson, MS. No 571. p. 395.*

* * Haddington reports this case :

1622. *February 23* — In a pursuit of spuilzie by Sir James Cleland, as sub-tacksman, the defender *alleged*, No process, while the principal tack was produced; which the LORDS found relevant; albeit the pursuer offered to prove, that the defender had paid him duties. But thereafter the LORDS sustained the pursuit, offering to produce the principal tack before the conclusion of the cause.

*Haddington, MS. No 2599.*1623. *July.*INGLIS *against* STEWART.

DECLARATOR of expiration of a back-tack of lands, at the instance of the receivers of a wadset and granter of a back-tack against the wadsetter's tacks-men. Compears Blairquhan, and craves to be admitted for his interest, and produces a sasine of Revenstoune, whereof he *alleges* the lands libelled are part and pertinent. *Replied*, Cannot be admitted, because the sasine is not of the lands libelled, and the allegiance of part and pertinent must be instantly verified, because the interest of a party, not called, and craving to be admitted for his interest, must be instantly verified, before he be admitted. Finds they will not admit him to prove his interest *cum processu*, but ordains him to instruct the same instantly.

No 18.

*Clerk, Durie.**Fol. Dic. v. 2. p. 303. Nicolson, MS. No 85. p. 56.*