

ways, but by the express renovation of the same, *nam expressa nocent, et non expressa non nocent*; and as the allegiance was not relevant, alledging that their sub-tenants had paid the greater duty to the ——— and Abbots of Scoon, except they would allege it was by her command, the Lords found, That the exception was relevant, and that, in taking of the last tack, she passes from the first, albeit there was no express renunciation of the first.

*Fol. Dic. v. 2. p. 423. Cobvil MS. p. 416.*

No. 126.

1594. January 13. STEWART against His TENANTS.

In action pursued by Alexander Stewart, servitor to my Lord of St. Colme, against certain tenants of the said Lord, it was found, That a tack set for service was sufficient, albeit it contained no other duty, and that, in a life-rent tack, a man had power to remove tenants, albeit it was not expressed in his tack, and that he having a tack of 8 bolls victual to be uplifted from the tenants, he might remove the tenants, *quod est novum*.

*Fol. Dic. v. 2. p. 423. Haddington MS. No. 473.*

No. 127.

Found, that a life-rent tacksman may remove tenants, although this privilege was not contained in his tack.

1622. February 23. L. STEEL against ———.

L. Steel, as sub-tacksman, having pursued an action of spuilzie of teinds against certain persons, who compeared, and alleged, that he ought to produce, before process could be granted at his instance, his author's tack, for his title, to instruct that he had right to the teinds, without which the sub-tack was not a sufficient title to sustain the pursuit; the Lords repelled the allegiance, and sustained the pursuit upon the sub-tack, the sub-tacksman proving *cum processu*, and producing where the setter of the sub-tack had a tack standing for the years libelled; and found no necessity to produce the said principal tack for the pursuer's title, seeing that the pursuer also offered to prove, that the defender had acknowledged the pursuer's sub-tack, by paying the duty for the said teinds to him divers years preceding the years acclaimed.

Clerk, Gibson.

*Durie, p. 18.*

No. 128.

1629. March 12. L. GALASHIELS against L. MAKERSTON.

In a removing, a tack set by one who was infest in lands was sustained to produce action of removing at the tacksman's instance, albeit it bore not a clause therein of power to in-put and out-put tenants, the tacksman proving, that the

No. 129.

A tacksman may pursue removing.