

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 tacksmen. 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.*