

against White, Fount. MS. IBIDEM : But both these cases concerned the question of removing; and it was never found the tenant, while allowed to continue his possession, was liable to more than the prestations in this tack.

*Answered*, That by act 18th, Parl. 6th, Ja. II. tenants were entitled to the possession of their tacks against successors, for sicklike mail as they took them for; and therefore, this tenant was not entitled to retain his farm-duty for his interest, because that was not paying to the creditors the mail for which he took the farm; though it was really paying it to Sir James: That in some cases, indeed, such clauses had been sustained in favour of the tenant, during the currency of the particular number of years for which the tack was set; but after expiration thereof, had always been found ineffectual, as in the cited case, Thomson against Reid; 16th June 1665, Dobie against Stephenson, Newbyth, MS. voce TACK; Montgomery against the Parishioners of Kirkmichael, Stair, v. 2. p. 206. IBIDEM; 27th June 1674, Peacock against Lauder, Stair, v. 2. p. 274. IBIDEM.

*Argued* on the Bench, That the distinction was not solid betwixt the cases of a superplus duty and none; for the retainable sum, as well as the superplus, was the rent; and the settler could not enable the tacksmen to retain from his successor a part thereof, more than the whole. It was further argued, on the supposition that the whole rent was exigible, whether the tenant was not in *bona fide* to impute it to the payment of his interest, until he was interpellated.

THE LORDS sustained the reasons of suspension as to all the money-rents falling due before the decret of the 30th November 1742; but found the petitioner liable for the said rents for all the years and terms after the said decret.

A&amp; Lockhart.

Akt. Hay.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 95. D. Falconer, v. 1. No 240. p. 325.

## SECT. V.

Possession upon a right good *ex facie*, although liable to objections.

1624. February 17.

THOMSON against LAW.

JOHN THOMSON being provided to the office of procurator-fiscal of the commissariat of Glasgow, by John Archbishop of Glasgow, during all the days of his lifetime; he is thereafter deprived from that office, by James Archbishop of Glasgow, and Mr James Law provided thereto, who served in the office for the space of three or four years; after the which, the said John obtains a sentence against the said James Archbishop, and also against the said Mr James Law, reducing the said deprivation *ab initio*; after the which, he pursues Mr

No 16.

No 17.

An incumbent granted a liferent commission to an office. The succeeding incumbent appointed another. The liferent

No 17.  
was found effectual, but the profits were found to be *bona fide* consumed in the mean time by the other.

James Law for the profits of the office, these years wherein Mr James bruiked the office before the reduction; from the which pursuit, the LORDS affoizied the defender, because the defender was provided to the office for these years, and served therein *bona fide*, and so ought to have the casualties thereof for his service, the pursuer neither having served in these years, nor having made any interruption to the defender, but being all that time silent; and albeit that deprivation was reduced *ab initio*, yet the Lords found it not enough to produce this action, seeing that reduction was not intended till after the years libelled, for the which the defender was convened, in the which years he had served *bona fide*, as said is; which the Lords found sufficient to elide this pursuit.

A.R. ———.

Alt. Nairn.

Clerk, Hay.

Fol. Dic. v. 1. p. 108. Durie, p. 111.

1635. February 19.

CUNNINGHAME against STUART.

No 18.  
In a special declarator of a rebel's liferent escheat against an intromitter with his rents, by right granted after rebellion, the plea of *bona fide* consumption was sustained till citation.

ONE Cunninghame, made donatar by George Rome, to the liferent escheat of Robert Neilson, of the lands of ———, which were holden of the said George Rome, after general declarator, recovered against the said Robert Neilson; in a special declarator he pursues one Stuart, intromitter with the duties and profits of the said lands, for refunding of the same to the donatar, of all years since the said rebel was year and day at the horn, viz. continually since the year 1615. And the defender *alleged*, that he was infest in the said lands by the said rebel, and by virtue thereof uplifted the profits of the lands *bona fide*, which being now consumed, and he never interrupted by any special citation, he ought not to be compelled to refund the same; and the donatar opposing the horning, which preceded the defender's infestment, and which put the rebel and all the lieges in *mala fide* to do any deed thereafter in prejudice of the superior, for the casualty of the liferent; especially also there being a general declarator recovered against the rebel's self, which declares the right in effect to pertain to the superior, since the time that he was year and day rebel: THE LORDS found the allegiance relevant to exclude this pursuit, for all the bygone years duties acclaimed, which the Lords found to have been *bona fide* uplifted and consumed by the defender, who was never interrupted by the superior, nor his donatar, in the possession of the same; for albeit the defender's infestment was made by the rebel to him, after he was rebel, yet the same was sufficient for the said by-gones, intromitted with by virtue thereof, wherein he was not interrupted, albeit it would not defend for the time to come, since the time of his special citation in this special declarator; but found the said infestment sufficient to liberate him for all the years before this his special citation, in this particular declarator, and that he was not interrupted, neither by the process, nor decret of general decla-