

defender, the pursuer might perfect to him a tack of the like nature, containing the like duty and space of endurance, as he is in use to grant to others his tenants for the like conditions; which conditions, if the defender, after probation as said is, should not perform, the Lords found that the bond could not furnish a defence against the removing, seeing thereby the tenant was bound to do the same in effect, if he claimed a tack to be set thereby to him; otherwise the defender might ever clothe himself with that bond, and never seek a tack, which was against all reason that the tenement should ever bruik the land in respect of the bond, and should pay nothing for the same; but this bond was found could not defend, if the pursuit had been made by a singular successor to the pursuer's right; and this was found as said is, albeit the pursuer alleged, that the clause of the bond being adjected to a tack which expired, should not furnish any ground of defence, because it neither contained time of entry nor term of endurance, nor duty, and was no real right; and if a tack, albeit it had been given to him, yet wanting time of entry, ish, and duty, it could not defend him, far less such a bond; which was repelled by the Lords, and interlocutor given *ut supra*.

Act. *Cunningham*.Alt. *Hope*.Clerk, *Scot*.*Fol. Dic. v. 2. p. 420. Durie, p. 191.*

1627. January 26. AGNEW against EARL of CASSILIS.

A rental given by Gilbert Earl of Cassilis 1567 to one Agnew, bearing that he rented him and his children kindly tenants to him in his five-merk land of N. was found by the Lords should be extended only during the father's life-time, and his eldest son's after him, and go no further.

Fol. Dic. v. 2. p. 420. Spottiswood, p. 290.

* * Durie reports this case:

In a reduction of a decret of removing, pursued at the instance of Agnew against the Earl of Cassilis, founded upon a rental of the lands libelled, given by this Earl of Cassilis' goodsir, to this reducer's father, by the which the said umquhile Earl received the said pursuer's father and his bairns, tenants to him in the said lands, for payment of a certain duty particularly expressed in the said rental; and the said umquhile Earl obliged himself never to remove the said ——— Agnew, who was this reducer's father as said is, nor his bairns, from the said lands, and obliged him to warrant the same to them, for this was the tenor of the writ; and in the end of the same it bears these words, "By this letter of tack subscribed with my hand;" whereby he called the same a tack, albeit the body was conceived in the words and tenor of a rental, receiving the party and his bairns kindly tenants, &c. in respect of the which rental, the pursuer, who was a bairn, and the eldest son of the receiver of the said rental, alleged that he could not have been decerned to remove. The defender alleged, that the rental

- No. 47. was set by the umquhile Earl of Cassilis *in anno* 1567, to a person particularly therein named, and his bairns, which behoved now to be found to be expired and extinct, seeing both the setter and receiver were deceased many years since, and that rentals ought to last no longer, and the words adjected thereto obliging the setter never to remove the receiver nor his bairns, could not extend to oblige the heirs of the setters, seeing it was personal; for he thereby only obliged himself not to remove; likeas he performed the same, for he never removed them; but that cannot be found obligatory to bind the pursuer to the bairns of the receiver, the receiver himself, and the setter also being both dead long since as said is; and where it was answered, that the adjection of that word, "rentalling his bairns, and obliging never to remove them," behoved to work something; he answered, That it did work this to them, that if the father, who was the special receiver, had died in the setter's life-time, the most that they could have craved was, that the setter could not remove them so long as he lived; but now he being dead, of no reason or practise ought it to last against the setter's heir; for otherwise, when this bairn shall bruik during his life-time, another of his bairns may thereafter bruik, which he alleged to be against law and practise. This allegiance was repelled, and the rental found sufficient to save the bairn of the special receiver of the rental unremoved during his life-time.

Alt. Neilson.

Clerk, Gibson.

Durie, p. 263.

1627. June 22. EARL OF GALLOWAY *against* TENANTS.

- No. 48. A rental to a man and his heirs *ad perpetuam remanentiam*, found to endure only for the lessor's and receiver's life-time *conjunctim*.

*Fol. Dic. v. 2. p. 418. Durie. Spottiswood.** * This case is No. 25. p. 7193, *voce* IRRITANCY.

1627. December 1. HARDIES *against* ———.

- No. 49. A tack having no definite time or ish, but to continue till a certain sum be paid to the setter, will be sustained against the setter, but not against a singular successor.

Fol. Dic. v. 2. p. 418. Auchinleck MS. p. 230.