

No. 202. fenders for that year's teinds acclaimed either by inhibition or any other deed, which might distress the excipient, they therefore could not quarrel the pursuer's right, nor interrupt his possession and tacit relocation, having no right in his own person, which could purge his intromission, or liberate him of the said teinds that year libelled. The Lords found the exception relevant, and found that the pursuer could not have action for the teinds of that year, whereof there was no tack nor title standing then in his own person; and that the renovation of his tack thereafter, no tacit relocation of the preceding teind intervening betwixt the expiring of the old tack, and acquiring of the new, and paying to the titular the old tack-duty of that year questioned, could not be a sufficient title to sustain the pursuer's action against the defenders.

Act. *Belcher & Cunninghame.*

Alt. *Lawrie.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 426. Durie, p. 6.

1626. March 3. DOUGLAS against ———.

No. 203.

In an action of spuilzie of teinds pursued by Mr. William Douglas, as prebendary and titular of the teinds, the Lords found, that the defender, being sub-tacksman to one who had a tack standing unexpired the year of the spuilzie libelled, albeit the sub-tack was expired before, and bruiking after the years of that expired sub-tack *per tacitam relocationem*, could not be pursued for spuilzie, the said principal tack being that year unexpired, as said is; albeit the said principal tacksman was deceased, and that none compeared for his heir, or any others who might claim right to the said tack, to clothe themselves with the right of the same; and therefore it was answered, that it was *jus tertii*, which could not defend the excipient, who had no standing right in his own person; notwithstanding whereof the exception was sustained.

Durie, p. 188.

1627. March 13.

L. LEY against BAR.

No. 204.

In an action betwixt Ley and Bar, for payment of the mails and duties of lands to Ley, as having the right of the ward of him, who held the said lands ward of the Prince; the Lords found, that a tack in the defender's person, clad with possession, was enough to exclude the pursuer for any greater duty acclaimed for the land, than the duty contained in the tack, for all the years preceding the date of that summons; the defender never being interrupted in the tack foresaid, by a pursuit before the date of the summons; and sicklike they found an infestment made by that same person, by whose decease the ward fell to the same excipient, for a certain feu-duty therein contained, relevant to exclude the pursuit, for any greater duty than that which was contained in the said feu-infestment, for the said

years preceding the summons, there being no interruption *ut supra*, and would not receive the reply in this place, upon the nullity of the said feu, founded upon the act of Parliament 1606, anent the not consent of the superior thereto, in respect of the possession had conform *bona fide*, which was sustained for the years foresaid, wherefore no interruption was made. Thereafter the pursuer took up this process by warrant of the Lords, and the interlocutor foresaid was refused to be extracted, although the defender urged, that he ought to have the extract of the same, which was refused. See WARD.

No. 204.

Act. *Stuart & Mouat.*Alt. *Hope & Nicolson.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 426. Durie, p. 290.*1628. *March 18.*LORD BLANTYRE *against* PARISHIONERS OF BOTHWELL

No. 205.

Inhibition of teinds found a sufficient interruption of tacit relocation, not only of the year in which it was served, but of all subsequent years whereof the titular received not payment.

*Fol. Dic. v. 2. p. 427.** * This case is No. 37. p. 6434. *voce* IMPLIED DISCHARGE.1633. *February 15.* LAIRD of LOCHINVAR *against* _____.

No. 206.

The Laird of Lochinvar having the life-rent of the lands of Dryburgh fallen in his hands as superior to James Lindsay of Banschop, pursues removing against the tenants. It is alleged for William Scot, one of the tenants, that he offered him to prove, that since the warning he has done service to Lochinvar: He led peats to the Laird's house, which was a part of the duty of his lands; which peats were a certain number of teind peats received from him by the Laird's servants, and burnt in the Laird's house: *Item*, That at command of the officer of the Barony, he has shorn in the Mains since the warning: *Item*, That he has paid taxations and feu-duties for the lands to the Laird's officer and chamberlain. To which it was answered, not relevant, except the services had been done by the special direction of the Laird, and the taxation and feu-duties paid to and received by the Laird. The Lords repelled the exception in respect of the reply, but ordained the tenants to remove at Whitsunday next.

Auchinleck MS. p. 200.