

- No. 77. obtruded to take effect against the pursuer's heritable right foresaid, he being singular successor, as said is; and the said tack against him could not be respected, as cohering with the former tack, but only ought to be respected, as if it had been set, appointing the entry thereof to begin at the year after the warning specified; for in effect it is so conferred; and if it had been so set, it would not have defended against the pursuer's heritable right, but might have produced warrandice against the setter;—this allegiance proponed against the tacks was repelled by the Lords, and the tacks sustained, seeing they were lawfully set *ab initio* before the pursuer's right.

Act. *Hope and Miller.*Alt. *Nicolson, younger.*Clerk, *Sir William Scot.**Durie, p. 32.*

No. 78.

1629. *June 18.*DUNBAR *against* TURNER.

A tack set by a tacksman who is only life-renter of his benefice, may not have the entry thereof conferred thereafter the decease of the setter, but tacks set by heritors may be conferred after their decease.

Auchinleck MS. p. 233.

* * Durie reports this case :

One being tacksman of lands for certain years, and by virtue whereof coming in possession, and the setter of this tack thereafter set another tack to another person, to begin at the expiring of the first tack; the posterior tacksman pursuing removing after the expiring of the first tack, against the first tacksman, the setter being deceased before the first tack expired; and the said prior tacksman alleging, that the setter had no right to the lands, and that he might maintain his possession while he were removed by one having right to the lands; it was found, that he ought to remove at the second tacksman's instance, and that he could not allege that the setter had no right, himself having taken a right from him, and having apprehended possession by virtue of that right; which possession he ought to render again to the second tacksman, who represented the setter, and came in the setter's place, sicklike as he behoved to render the same to the setter's self, if he had been on life, and pursuing him therefore, whose possession he could not invert, nor oppone to his right; neither was it respected, that this pursuer's tack took not beginning nor entry in the life-time of the setter, for it was not thereby found to be null as conferred *in tempus introitus indebitum*, seeing it was a tack set by a laick person in temporal lands, not by an ecclesiastick or beneficed person wherein that holds.

Act. *Nicolson.*Alt. *Belcher.*Clerk, *Scot.**Durie, p. 446.*