

1630. *March 5.* FOWLER *against* CANT, GRAY, and LADY LAWRIESTON.

No 25.

MR JOHN CANT, Alexander Gray, and the Lady Lawrieston being complained upon, in a double pointing, raised by Alexander Fowler tenant in Lawrieston, who was distressed by both parties for his farms crop 1629, Mr John Cant claiming them as being infest in the land, and so as *dominus fundi*; likeas he had arrested the same in October, before the terms of payment; and the Lady and Gray, (who concurred claiming them,) because Mr John Cant had set a back tack to Sir Alexander Napier, who gave him that heritable right, for payment of a silver duty, and which Sir Alexander had given a factory to the Lady his wife to intromit with the farms, and dispoñe therupon; likeas she had sold the farms the years libelled to the said Alexander Gray, who had paid her therefor, and the said Fowler the tenant had given at her desire his bond to the said Alexander Gray, for delivery of the victual to him, whereby Gray *alleged* he had right to the said victual, seeing his bond preceded the arrestment used by Mr John Cant. THE LORDS found, that the farms of the land were liable to the heritor, notwithstanding of the back-tack set by him, and notwithstanding of the tenant's bond, given to Gray who bought the same; for they found, that by the granting of a back-tack for payment of a silver duty to the granter of his right, at the time of the acquiring of his right, the heritor setter of the tack was not denuded of the right, which he as master of the ground had to the fruits of the ground, but that the same remained ever hypothecated to him for the said back-tack duty, until he were paid thereof, and that he might take himself to the ground, and to the possessors thereof, or any intromitters with the fruits of the same, for payment of the said duty, which he might lawfully do, albeit he had never discussed his own tacksman, nor had ever charged him therefor, and the creditor who had received the tenant's bond, was found to have no right thereto.

In a competition between a landlord and a person who had purchased corns from a sub-tacksman, and had paid the price thereof, the former was preferred.

- Act. Stuart.

Alt. ———.

Clerk, Scot.

*Fol. Dic. v. 1. p. 417. Durie, p. 499.*1639. *March 29.*HAY *against* ELLIOT.

DAME Margaret Hay, relict of Sir Michael Preston, pursues one Elliot, who had intromitted with certain corns sold by her tenant to him, which tenant was addebted to her in the farms of her conjunct-fee-lands, of the crop 1638, particularly libelled; and which corns so intromitted with, were of the corns growing upon the said lands the same crop. And the defender *alleging*, that he bought these corns in a public market, after Yuil, and paid the price therefor, which ought to liberate him; for it were a dangerous preparative, to cause parties who had bought corns *bona fide* in a public market, and had paid for the

No 26.

Purchaser of corn in a public market, found liable in the landlord's rent, though at the time of the purchase the tenant had as much corn on the farm as would pay the rent, and sow the ground.