

1631. July 22.

LAIRD OF CLACKMANNAN *against* The TENANTS OF BALNAMON.

Tack set for security of annual-rent disposed furth of other lands enduring not redemption, found null, because indefinite, albeit he only was infest in an annual-rent of 1000 merks out of Blebshall, *et in corpore contractus*, tack set of ———, finding the not redemption for payment.

No. 113.

*Kerse MS. fol. 104.*

1664. June 15.

THOMSON *against* REID.

James Thomson in Cryle having apprised certain tenements in Edinburgh from James Sinclair, pursues James Reid, as one of the possessors, for mails and duties, who alleged that he had bruiked by tack from James Sinclair, before the apprising; which tack bore £.80 of tack-duty, and to continue for seven years, and bore expressly a provision, that the said James Reid should retain the annual-rent of 600 merks addebted to him by Sinclair, as a part of the tack-duty, and that he should not be removed, until the said 600 merks were paid. The pursuer answered, that the allegiance was nowise relevant, to account the payment of the £.80 of tack-duty to the pursuer, out of which the defender could have no retention of his annual-rent, because that is but a personal provision, adjected in the tack, and no part of the tack, and can work no more, than if such a provision had been made out of the tack, in which case it would only have been a part of the tack-duty in compensation of the annual-rent, as an assignation would not be effectual against a singular successor, and would endure no longer than the land was his, who assigned the duties; so now the land ceasing to be Sinclair's, the assignment or allocation thereof, to be retained for satisfaction of the annual-rent, is not relevant against this appriser, no more than that part of the clause, by which the defender is provided, not to remove till his sum be paid, which was never sustained to be effectual against a singular successor. The defender answered, That this defence stood relevant, because the clause of retention is adjected immediately to the tack-duty, and so is as a part thereof, and so is real and effectual against a singular successor; because, if Sinclair had set the tack for a grot, it would have been valid, and therefore might more set it for the satisfaction of the annual-rents, and so much duty further.

No. 114.

A tack for seven years for a small rent, and allowing the tenant to retain the rest of the tack-duty in lieu of the annual-rent of a sum till the principal was paid, was found valid against singular successors only for seven years.

See No. 118.

The Lords sustained the defence, that seeing there remained a tack-duty, over and above the retention of the annual-rent, and that the tack had a particular ish of seven years, that it was valid; but found the case dubious, if there had been no tack-duty over and above the annual-rent; but that the land had been either set expressly for satisfaction of the annual-rent, or for such a sum equivalent there-