

No 7. 1628. December 5. OLIPHANT against L. MONORGAN.

IN a pursuit upon a bargain for buying of lands, one of the parties dying before any writ was made, albeit none of the parties resiled therefrom in their lifetimes, and albeit some things were done betwixt the parties, in contemplation of the bargain to have been perfected; yet found the bargain by the death of any one of the parties ceases, and either party hath action, as the law may yield, against those who represent the defunct, for restoring of any thing which their predecessors received from the other, with the party's interest thereby.

Act. *Stuart & Aiton.*

Alt. *Nicolson.*

Clerk, *Hay.*

Fol. Dic. v. I. p. 560. Durie, p. 406.

No 8. 1629. January 24. A. against B.

ONE having pursued another for the duty of certain lands set to the defender by the pursuer in tack, for the space of five years, it was *alleged* by the defender, That he possessed not the room that year he was pursued for, but had renounced his tack half a year before, which he might lawfully do, there having no writ intervened between the parties, but the tack being only verbal. Yet because he had possessed three years of the five, the LORDS found he could not renounce for the other two years at his pleasure.

Fol. Dic. v. I. p. 560. Spottiswood, (TACKS and ASSEDATIONS.) p. 327.

* * * Auchinleck reports this case :

1629. January 14.—A TENANT having taken a tack five years, by word, and having bruiked the land for the space of three years, renounces his tack *debito tempore* to his master, whilk he will not accept, but pursues for the duty of his tack. The tenant *alleged* he might renounce, likeas he renounced, seeing the tack was but verbal. THE LORDS found he behoved to keep out his tack, in respect the pursuer referred to the tacksman's oath, that he took the tack for five years, and had bruiked the same for three years.

Auchinleck, MS. p. 232.

1636. July 16. KEITH against JOHNSTON'S TENANTS.

No 9.
A party took
lands for five
years, of
which he pos-
sessed two.

IN a pursuit to labour the ground, conform to a five years tack thereof, set by Alexander Keith to the tenant, and accepted by the tenant, and according whereto he had laboured the room two years of the five, which was referred to his oath; it being questioned, if the tenant might, after he had bruiked the

room two years of the five, the tack not being perfected by writ, but only offered to be proven by the defender's oath, thereafter give over the room to the master, and that thereby he was freed of the tack; the master contending, that he ought to bruik it out during the space agreed upon, the LORDS were of the mind, that albeit the party had by his oath granted the condition, and also that he had confessed that he had laboured the land two years, yet that thereafter he might repent, and that it was lawful to him to quit the room at any year thereafter, before the Whitsunday, and that he was not bound to keep the said tack, it not being perfected by writ, albeit he had bruiked the lands two years of five; so that these sorts of pactions were not found obligatory, except writ had been made thereon; and because Mr Alexander Keith was debarred by horning, and that Mr Robert Mowat, who was donatar to Alexander Keith's escheat and liferent, assisted the pursuit, Alexander himself being debarred, as said is, although the LORDS found *ut supra*, yet the decision run on this ground, that the singular successor might be repelled by this exception, and that the defender had competent place of repentance against him, there being no writ to make the security real, whereby either party contractor and their successors might be equally bound to others.

Act. *Stuart and Mowat.*Alt. *Nicolson and Forbes.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 560. Durie, p. 816.*

1637. July 15.

SKEEN against ———.

MR ANDREW SKEEN of Halyards, pursues ———, for entry to the lands of ———, which were set by him to the said tenant, conform to an appointment faithfully accorded, and convened fully upon, betwixt them, whereby the said Mr Andrew set the lands to the said tenant, for the space of years, for payment of such a duty condescended on in the summons, at the which time the said tenant promised, that if he entered not to the lands, conform to the said agreement, that then he faithfully promised to pay a year's duty for the said lands, and therefore pursued him to enter and keep the bargain, which he referred to his oath. And the defender *alleging*, That there was place of repentance; likeas immediately after the conference concerning the said bargain, he gave it over, and declared that he could not stand to the same, which he did, and might have passed from that conference, seeing nothing had followed further thereupon; and the pursuer sustained no prejudice, the conference being had about Whitsunday last, at which time the ground was laboured by the tenant indweller therein; and before the crop be separated, he had, and has sufficient time to provide for another tenant;—THE LORDS found, That there was place for repentance to the tenant to quit the bargain *rebus integris*; and that he could not be compelled to keep the condition libelled, to

No 9.

Found entitled to quit possession at any term, no writ having intervened.

No 10.

Lands were let verbally. The tenant did not enter, though the master built barns, &c. for him. He was not bound to perform, but was liable for an agreed penalty to be proved by his oath.