

1667. July 10.

MR JAMES DEAS *against* KYLE.

## No 18.

Although a certain number of acres only were specified in a tack, yet as it mentioned 'as possessed by the tenant himself,' he was entitled to all, altho' more acres than expressed.

MR JAMES DEAS being infeft by the Earl of Haddington in certain husband lands and acres in Earlston, with a general clause of all lands within such bounds, pursues Robert Kyle to remove from certain acres within that bounds, who *alleged* absolvitor, because he has tacks standing from the Earl of Haddington of all the lands possessed by him, and produces the tack, bearing the Earl to have set him 14 acres of land presently possessed by himself, and declares he has no other than what he possessed before the tack, and during the time of the tack, now by the space of 30 years. The pursuer *answered*, That his tack gave him only right to 14 acres; so that the pursuer, by the general clause, must have all the rest. It was *answered*, That the defender was not obliged now to dispute the extent or quantity of his acres, nor to restrict to the present extent of acres, especially seeing that which he did possess the time of the tack, was set to him by his tack, simply without reservation; and albeit designed 14 acres, and were more, it is nothing; for an erroneous designation vitiates not, unless it did appear to be restrictive or taxative; likeas the pursuer's acres in his infeftment will be as large proportionally as the defender's. The pursuer *answered*, That whatever the extent of his acres were, the general clause gave him all that was not reserved to the defender; and he offered him to prove, that there were six acres beside the 14 acres, severally kend and known, and possessed by different possessors before his tack. The defender *answered*, That he opposed his tack, bearing the lands to be then in his own possession, at the granting of the tack, and he having possessed 30 years accordingly, *hoc judicio* he was not obliged to dispute any anterior possession:

Which the LORDS found relevant.

*Stair, v. I. p. 477.*

1668. July 25.

DUNCAN CAMPBELL *against* The LAIRD of GLENORCHY.

## No 19.

A distinction made between natural possession, and by tenants.

DUNCAN CAMPBELL pursues the Laird of Glenorchy, for ejecting him from certain lands, and especially that his brother, by his direction, did violently cast out the pursuer's children and servants out of a part of the land laboured by himself, and persuaded and enticed his tenants to receive tacks from him, and pay the mails and duties to him, and therefore craves re-possession and double mail, as the violent profits of the whole lands during the defender's possession. The defender *alleged* absolvitor, because he had obtained improbation against the pursuer of all his rights of these lands, and others, and likewise decret of removing. The pursuer *answered*, That the defence ought to be repelled, because the improbation was only by a certification when he was prisoner in Ireland, and the defender, by articles of agreement produced, had acknowledged