

No 37.

1668. January 8. MARGARET FORBES *against* ———.

MARGARET FORBES having granted a tack of her liferent-lands to ———, bearing expressly for payment of such a sum of money, and bearing to endure for 19 years; she did receive a back-bond of that same date, bearing, that so soon as the sum was paid, the tack should become void. The tack coming to a singular successor, she pursues him for count and reckoning, and removing, and insists upon the tenor of the tack and back-bond. It was *alleged* for the defender, That the back-bond did not militate against him, being a singular successor, neither being registrated nor intimated to him before his right, in respect the tack is a real right, and no obligation or provision of the tacksman can prejudice a singular successor.

THE LORDS repelled the defence, and sustained process against the defender, in respect of the tack and back-bond,

*Fol. Dic. v. 4. p. 65. Stair, v. 1. p. 500.*

No 38.

A back-bond under a superior's hand declared, that the vassal should have liberty to renounce his feu-right when he pleased. This found effectual against a singular successor in the superiority, it being of the same date with the feu-contract, and relating to a matter intrinsic in the nature of the feu.

1669. February 12. JOHN BROWN *against* ROBERT SIBBALD.

JOHN BROWN having taken a feu of some acres of land, at a great rent in victual and money, pursues Robert Sibbald (now his superior) to hear and see it found and declared, that he might renounce and be free of the feu-duty. The defender *alleged* absolutor, because this feu was by a mutual contract, by which the vassal had bound him and his heirs to pay the feu-duty yearly, and which obligation he could not loose at his pleasure; for albeit feus which are proper and gratuitously given without any obligation on the vassal's part, but given by a charter, or disposition, as being presumed to be *in favorem* of the vassal, he might renounce the same, *nam cuius licet favori pro se introducto renunciare*; but here the vassal being expressly obliged for the feu-duty, cannot take off his own obligation, this case being like unto that of a tack, which being by mutual contract, cannot be renounced, though by a tack only granted and subscribed by the setter it may. The pursuer *answered*, That he opposed the common opinion of all feudists, *de feudo refutando*, wherein there is no exception, whether the feudal contract be subscribed by both parties; for every contract must necessarily import the consent of both parties, and the acceptance of a vassal to a feu by way of disposition is all one with his express obligation in a mutual contract. *2do*, Though such a contract could not be renounced, yet this pursuer may renounce, because by a back-bond by the superior, who granted the feu under his hand, he has liberty to renounce when he pleases. The defender *answered*, That this back-bond not being *in corpore juris*, nor any part of the investiture, it was personal against that superior who granted the same, but not against the defender, who is a singular successor. It was