No 1. the same shall be pursued by the charger against the suspenders; and notwithstanding also of the first reason, except for the mending of the manse by the defunct in his own time, the expences whereof shall not exceed 400 merks, if there be an act, which the charger alleges, to be anent the refunding of the expenses by an intrant restraining the same to that sum, which the charger promised to produce, and therefore admit that part of the first reason, anent the defunct's expenses debursed in his own time, upon mending of the manse by himself, to the suspender's probation, and assignees a day to prove.

Clerk, *Hay*.

Fol. Dic. v. 2. p. 316. Nicolson, MS. No 65. p. 43.

No 2. 1664. *February.* HODGE *against* BROWN.

A TACKSMAN of a house has no claim for what he builds or repairs, unless the same be conditioned in the tack.

Fol. Dic. v. 2. p. 316. Gilmour.

*** This case is No 118. p. 2651, *voce* COMPENSATION.

1667. *June* 12. LUMSDEN *against* SUMMERS.

No 3. A PARTY having furnished corn and straw to a rebel for entertaining of his cattle, was found to have no claim against the donatar of escheat, though the only person who was benefited thereby, in regard the furnisher followed the faith of the rebel only, without any view to benefit the donatar.

Fol. Dic. v. 2. p. 316. Dirleton.

*** This case is No 44. p. 8359, *voce* LITIGIOUS.

No 4. A tacksman after being dispossessed by letters of ejection, continued to sow the ground. The crop found to belong to the proprietor, he paying expense of seed and labour.

1671. *February* 22. GORDON *against* Sir ALEXANDER M'CULLOCH.

WILLIAM GORDON pursues Sir Alexander M'Culloch for spuilzieing of certain corns; who *alleged*, Absolvitor, because the defender having right by aptzing to the lands whereon the corn grew, did warn the pursuer, and obtained decreet of removing against him, and thereupon dispossessed him; and finding the crop upon the ground, he might lawfully intromit therewith, *nam sata cedunt solo*, especially where the sower is *in mala fide*; but here he was in violence after a warning, and did continue to sow after decreet of removing; yea, a part was sown after he was dispossessed by letters of ejection. The pursuer

answered, That by the law and custom of Scotland, the crop of corns, or industrial fruits, are never accounted as *pars soli*, or any accessory, but are still moveable, even when they are growing, so that they belong, not to the heir, but to the executor; and, in case of a disposition, without mention of the crop, albeit the acquirer were infeft after they were sown, and upon the ground, he would not have right thereto; neither doth *mala fides*, or violent possession, alter the case, for which the law hath provided a special remeid, viz. the violent profits; but it can be no ground to meddle with the party's crop, *brevi manu*, as accessory to the ground, for then the parties should both lose the crop, as *pars soli*, and be liable to the violent profits; neither is there any ground from the warning, nor yet from the decreet of removing, which was suspended before it attained full effect, and the defender continued in possession of a house upon the ground, albeit he was put out of the principal house. It was *answered*, That the decreet had attained full effect before the suspension, all the pursuer's goods being off the ground, and he out of the mansion-house, wherein the defender entered, and brought all his goods upon the ground; and though the pursuer's mother being a valitudinary impotent woman, was suffered to remain in a cot-house, and the pursuer with her, upon that account, that imports no continuance of possession of the land. No 4.

THE LORDS repelled the defence, as to that part of the crop that was sown before the apprizer entered by the letters of possession, reserving to him the violent profits for that time: but found the defence relevant, as to what the pursuer did after the defender's dispossession; and found the defender only liable for the expenses of the labouring and the seed, as being *eatenus locupletior factus*. See TACK.

Fol. Dic. v. 2. p. 317. Stair, v. 1. p. 727.

1676. *January* 18. BINNING *against* BROTHERSTONES.

No 5.
A removing after a reduction was stopt till the meliorations were paid.

ALEXANDER BINNING having reduced a right of some tenements in Edinburgh granted to Brotherstones, he pursues him to remove, who *alleged*, that he had *jus retentionis* till the meliorations of the tenement were satisfied. It was *answered*, That what meliorations he had made, were *in suo*, he having then an infeftment of fee, which being reduced, the meliorations pass as accessory, and he enjoyed the mails and duties all that time.

THE LORDS found, that the defender ought to have no satisfaction for what expenses he gave out to keep the tenement in as good condition as he got it, but only for other meliorations, as would be profitable to the pursuer, by raising of the rent of the tenement.

Fol. Dic. v. 2. p. 316. Stair, v. 2. p. 491.