1663. *January* 16. EARL of ERROL *against* PARISHIONERS of URY.

No. 207.
Tacit relocation of a tack of teinds found to support the possession for more years than the person who had granted the tack could have validly let them.

The Earl of Roxburgh pursues the heritors for the teind, from 1648 till 1662, as he who had right during that time, by the act of Parliament 1649, establishing the right of the teinds in the patron, in lieu of their patronage, and also as he who had tack thereof, and had since possessed by tacit relocation. The defender alleged, as to the first title, that the Parliament 1649 was not only annulled, but declared void *ab initio*, as a meeting without any authority. As to the tacit relocation, it could not extend any further than so many years as the beneficed person could set. It was answered for the Earl, That the rescissory act could not prejudge him, as to any thing anterior to its date, unless it had borne expressly to annul as to by-gones.

The Lords found the libel and reply relevant, as to by-gones before the act, albeit there be no *salvo* in that act, as there is in the rescissory acts of the remanent Parliaments; and found that the pursuer had right, *per tacitam relocationem*, till he was interrupted, even for years which the beneficed person could not validly set, as a life-renter's tack will be valid against the fee, *per tacitam relocationem*, after her death, though she could grant no tack validly after her death.

Fol. Dic. v. 2. *p.* 426. *Stair, v.* 1. *p.* 158.

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

No. 208.

A possessor after he was warned to remove, and even after decreet of removing, having continued to sow the ground, it was found notwithstanding a spuilzie in the proprietor to meddle with the crop, though sown *mala fide;* but as for what was sown after he was dispossessed by letters of ejection, the Lords found these did belong to the proprietor, upon the principle that *sata cedunt solo.*

Fol. Dic. v. 2. *p.* 427.

*** This case is No. 4. p. 13400. *voce* RECOMPENCE.

1672. *November* 19.
The BISHOP of ARGYLE *against* JOHN WALKER his Commissary.

No. 209.
A renunciation of a tack will not take off the effect of tacit relo-

The Commissary having had a tack of the quots of testaments and whole casualties belonging to the late Bishop of Argyle, and after expiring of the tack, having continued to intromit during the time this present Bishop's decreet was gotten against him, as being liable *per tacitam relocationem*, after which decreet the

Bishop of new did pursue him upon the same ground for the tack-duty since the last decreet;—it was alleged for the defender, That in the former process he having judicially renounced the said tack, he could only be liable for his intromission *et tanquam negotiorum gestor*, but not as tacksman, seeing if he had intromitted with much more than the tack-duty, undoubtedly he would have been found liable therefore; and therefore *a contrario* of his intromission should be found less, he ought not to be further liable. It was replied, That the said renunciation being but *protestatio contraria facto*, the Commissary by his subsequent intromission did return to be in the case of *tacita relocatio*, as is clear in the case of a tenant of lands, who should continue to labour after renouncing of his tack. The Lords did sustain the pursuit, notwithstanding of the defence, and found that the Commissary, by his former intromission, being stated in the case of *tacita relocatio*, any renunciation made in that process was past from by his subsequent continuing to intromit, whereby the Bishop had it in his power to adhere thereto or not; in respect that he was *in mala fide* to contravene his own renunciation; and the argument *a contrario* could not militate against the Bishop; as likewise found, that there was no difference in this case betwixt a tacksman of lands and of casualties, which are uncertain. Yet many of the Lords were of a contrary opinion; but it was carried by a plurality of votes, and it seems upon no just reasons.

No. 209. cation, if the tacksman thereafter continue to possess or intromit.

Fol. Dic. v. 2. p. 427. Gosford MS. p. 278.

1679. *February* 20. The EARL of ABOYNE *against* His VASSALS.

No. 210. Consent to continue in possession inferred from facts.

The Earl of Aboyne having obtained a gift from the King of a part of the estate of Huntly, fallen in the King's hands by Argyle's forefaulture, worth £.400 Sterling yearly; which being cognosced by a commission, the Earl was infeft, and pursued improbation against the vassals, a great part of his rent being feu-duties, and did obtain certification against several of the vassals whom he warned, and obtained a decreet of removing. They raise reduction of the certification and decreet of removing, and give in a bill of suspension on the removing, which, upon the Earl's desire, was ordained to be discussed upon the bill. The vassals insist on these reasons; *First*, That the Earl's gift being but for lands worth £.400 Sterling, and part thereof getting the superiorities and feu-duties as rent, he could claim no further than the feu-duty; *Secundo*, It was offered to be proved, That the Earl's Lady or Chamberlain had accepted the feu-duties for terms after the warning for several years, and thereby the warning is past from. It was answered for the Earl *non relevat*, unless the feu-duty had been accepted by his special warrant to lift these feu-duties; for use of uplifting, or general commission for uplifting of feu-duties, could never import a warrant to lift the feu-duties of their lands, to the whole rents whereof he had right by certification. It was replied, That the Earl's warrant, consent, or approbation, was sufficient, which was inferred by decreets in his own