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

No. 210. courts against the vassals, to pay to my Lady and the Chamberlain, or that the Earl had received accounts, containing these feu-duties as particular articles, or that by his knowledge the same were applied to his use, and his knowledge must be presumed by his Lady's or his Chamberlain's receiving the feu-duties, for three subsequent years, from these vassals, they being many in number.

The Lords found, That the receiving of the feu-duties for terms after the warning by my Lady or the Chamberlain for several years, without offer to return the same, did put the feuers *in bona fide*, to continue their possession, notwithstanding of the warning, and did free them from paying any more for the said years; but found the same not to import a passing from the warning, unless the same had been done by the Earl's special warrant or approbation by decreet in his own courts, by his warrant, or in his presence, or by allowing in his accounts particular articles in the charge, bearing the receipts of these feu-duties, for applying them to his use, with his knowledge; but that they might be decerned to remove at Whitsunday next without a new warning.

Stair, *v.* 2. *p.* 698.

1682. *March.* M'BRAIR of Netherwood *against* MR. THOMAS ROMES.

No. 211. Found, that a summons intented after expiring of a tack, for payment of a greater duty than is therein contained, doth interrupt tacit relocation.

Fol. Dic. v. 2. *p.* 426. *Harcarse, No.* 950. *p.* 268.

P. Falconer reports this case:

In an action of count and reckoning, pursued by M'Brair of Netherwood against Romes, for extinguishing a comprising, as being satisfied within the years of the legal; the Lords found, That tacit relocation was interrupted after the expiring of a tack, by a pursuit for greater mails and duties than were contained in the tack, in regard the summons bore payment of the duty in time coming; and therefore the compriser was found accountable for the ordinary worth of the lands, as it was proved after citation upon the said summons

P. Falconer, p. 35.

1705. *February* 1.

The CREDITORS of DUNFERMLINE *against* The OFFICERS OF STATE.

No. 212.
Tacit relocation competent to the tacksmen of

The late Earl of Dunfermline's predecessors having a tack of the teinds and feu-duties of the lordship of Dunfermline from the King, and being in possession at the time of his forefaulture in the year 1695; the estate hath been under se-