

tacks, or even the verbal set for a term of years, can never have any effect, although offered to be proved by the parties' oaths; Keith, No. 9. p. 8400. *voce* LOCUS PŒNITENTIÆ; Skene, No. 10. p. 8401. *voce* LOCUS PŒNITENTIÆ. Nor is there any difference betwixt an heritor's paction or promise to continue or prolong a tack for a term of years to the former tacksman, and a paction or promise that he should not remove the tacksman after the determination of a tack current. This at least is obvious, that both have the same effect; and it is a fair consequence, that where the effects of both are the same with respect to the master and tenant, both ought to be governed by the same rules in law; that is, that such pactions ought to be established by writ, according to the usual solemnities; and wherever writing is to be interposed, there is *locus pœnitentiæ* before the same is subscribed.

The Lords found the reason of suspension not relevant to oblige the charger not to remove the suspender for more than one year after the ish thereof; and it not being denied by the suspender, though alleged by the charger, that the suspender has had allowance to possess two years since the ish of the tack, found there was no need of any proof of the agreement mentioned in this reason of suspension, the same being already sufficiently implemented as far as it was obligatory; and therefore repelled the reason of suspension.

Fol. Dic. v. 4. p. 322. C. Home, No. 187. p. 311.

1750. February 8. GARIOCH against FORBES.

Alexander Garioch of Kinsterey, purchaser of the lands of Lesmore, from Gordon of Wardhouse, pursued a removing against Alexander Forbes, possessor of a part of the lands, who defended himself, upon an agreement between him and Wardhouse, the pursuer's author, which had been executed by two missives, one by Wardhouse, bearing, that Forbes was to have a tack for 19 years, the other from Forbes, accepting the offer. This was sustained against the singular successor; who was found liable in the tenant's expense for disputing it, which he did on the ground, that this was no tack, but only an obligation to grant one, and that such obligations are not effectual against singular successors.

Fol. Dic. v. 4. p. 322. Kilkerran, No. 9. p. 537.

1753: March 6. WILLIAM BARRON against THOMAS DUNCAN.

Barron granted a subset of certain lands to Duncan, for five years. The agreement was executed by mutual missive letters betwixt them, which were written by a third party; and Duncan entered into the possession of the lands, and possessed the same for one year.

No. 23.

No. 24.
Obligation to grant a tack, if effectual against singular successors?

No. 25.

No. 25. Barron obtained a decret of removing against him before the Sheriff; upon which he was ejected.

In a reduction of this decret, Barron acknowledged his subscription to the letter; but pleaded, that such missive letter, not being holograph, is not a proper writing for constituting a tack for a number of years.

Answered: Whatever might be the case in a question with singular successors, this plea cannot be good to the defender, who acknowledges the contract, and his subscription to the writing, especially after it has taken effect by possession.

“ The Lords sustained the reasons of reduction, and ordained the pursuer to be repossessed.”

Act. *J. Burnet.*

Alt. *And. Pringle.*

Clerk, *Kilpatrick.*

M.

Fac. Coll. No. 72. p. 111.

* * See Lord Kames's report of this case, *voce* WRIT:

1757. *August 10.*

JAMES GORDON of BADENSCOTH *against* ALEXANDER HALL, his Tenant.

No. 26.

Nullities of a tack supplied by the tenant's possession.

A letter being addressed to an heritor, who was minor at the time, by a former tenant, agreeing to become bound to accept of a tack of the same farm, for thirteen years, and to pay a rent which was acknowledged to exceed the old rent in two particulars, viz. eight feet of peats, and a stone of butter; this was found equivalent, against the heritor, to a tack, though the letter bore no date; because it was proved, by the heritor's declaration, that the date of the letter was five years before; and though his curator was not present at receiving the letter, yet he himself became major soon after, and received the additional rent contained in the letter for four years; during which time, as he acknowledged, the tenant possessed upon no other title than the letter.

Act. *Burnett.*

W. J.

Fac. Coll. No. 51. p. 85.

1766. *November 25.*

CAPTAIN JAMES STEWART, Factor on the Estate of Leith-hall, *against* PATRICK LEITH, Tacksman of Christ-kirk.

No. 27.

Tenant's oath in a judicial rental cannot give a verbal set of lands the effect of a written tack.

Patrick Leith, at Whitsunday, 1756, entered to the possession of the lands of Christ-kirk, in consequence of a verbal set from Mr. Leith of Leith-hall; and, after Leith-hall's death, in 1764, Captain Stewart, as factor for Mr. Leith's son, a minor, brought an action before the Sheriff of Aberdeenshire for removing Patrick Leith from these lands. The Sheriff decerned in the removing; and the cause was brought into the Court of Session by suspension.