

No. 85. where it was found, that possession upon a former subsisting tack was sufficient to render a prorogation real, though the term of entry upon the prorogation was not come.

“ The Lords found, That the tack could not subsist by virtue of the annual prorogation, after the estate was sequestrated.”

Act. *Johnstone.*

Alt. *H. Dalrymple.*

Clerk, *Forbes.*

W. J.

Fol. Dic. v. 4. p. 323. Fac. Coll. No. 32. p. 55.

1769. *November 30. SCOT against GRAHAM and Others.*

No. 86.

Certain tacks, granted by John Rae of Castlebank, to commence after the expiry of the leases subsisting at the time, were found reducible, at the instance of his real creditors, in respect the creditors were “ infest in the lands let before the tenants obtained possession thereof, in virtue of those tacks.”

It was pleaded for the tenants; That so long as the proprietor continued in possession, he could grant tacks with effect; and it has never been imagined, that tenants were bound to search the records for incumbrances, before they ventured to enter into a lease.

Answered; The tacks in question would have been good against the heir of the proprietor; they might perhaps have been good against a voluntary purchaser; but they cannot be sustained against onerous creditors, who stand in a very different situation, and against whom the prorogation of a tack has not, in any instance, been sustained.

Act. *Crosbie.*

Alt. *Armstrong.*

G. F.

Fac. Coll. No. 100. p. 356.

1772. *February 5. ARBUTHNOT against SIR JAMES COLQUHOUN.*

No. 87.

Arbuthnot, proprietor of the lands of Finart, in a tack granted to Frasers, inserted the following clause: “ In case the said Frasers shall think proper to inclose any of the grounds, with sufficient dikes, they shall, at their removal, on leaving them sufficient, be paid a comprised price for the same, not exceeding a year’s rent.” The estate being brought to judicial sale, and purchased by Sir James Colquhoun, Frasers brought an action, some years before the expiry of the tack, against the representatives of Arbuthnot, for payment of a year’s rent, to be laid out by them in building dikes. The Lords assoilzied *in hoc statu*, reserving action for the value of the dikes, at the expiry of the tack, against the defender or his representatives, in case the same should not be allowed by Sir James Colquhoun, or the proprietor of the lands for the time. On the expiry of the tack, Frasers insisted in their claim against the representative of Arbuthnot,

who called Sir James Colquhoun in an action of relief against Frasers' demand. The Lord Ordinary found the representative of Arbuthnot liable in the comprised value of the dikes; but, in respect there is no obligation in the tack to build the dikes, and that the obligation to pay depended on an uncertain event, and that there was no mention therein of assignées, assoilzied Sir James Colquhoun. The Lords, however, altered this interlocutor, and held the clause effectual against a singular successor, finding Sir James Colquhoun liable in payment.

No. 87.

Fol. Dic. v. 4. p. 327. Fac. Coll.

* * * This case is No. 103. p. 10424. *voce* PERSONAL AND TRANSMISSIBLE.

1774. November 16.

HUGH GORDON *against* JAMES LORD FORBES and JONATHAN FORBES of Brux.

In 1755, the Lady-Dowager of Forbes, who then life-rented the whole estate of Forbes, set to Hugh Gordon, during her life, "the Mains of Castle-Forbes, with the houses, yards, and hail righteous privileges thereof, and services, as presently annexed thereto, and possessed by Robert Milner, tacksman thereof."

These services, described in the foregoing tack, by a general reference to the possession had by Robert Milner, consisted of the services of sixty men yearly, one day to the fold-dike, forty-two hooks in harvest, twenty-eight men for gleaning corn, forty-two for dunging the lands, fourteen for harrowing, and eighty-four horses for harrowing and dunging corn.

Lady Forbes having acquired the property of the estate of Forbes, it was purchased from her by Dr. Gregory, who sold it out in different parcels. In particular, several farms in the parish of Forbes were bought by Lord Forbes, and two farms in a different parish by Mr. Forbes of Brux; and the Mains of Forbes, the pursuer's farm, became the property of another purchaser.

By the dispositions granted to them, the defenders were taken bound, in the usual way, to maintain the subsisting tacks upon the different farms which they had respectively purchased.

By the tacks which subsisted at the time of the sale, the tenants of some of the farms bought by the defenders were bound to perform the services above-mentioned to the Mains of Castle-Forbes during all the years of their different tacks; and, accordingly, while these tacks subsisted, these services were regularly performed by the tenants; but when Lord Forbes and Mr. Forbes of Brux were entering into new leases, to take place upon the termination of the former, they considered themselves as laid under no obligation, by the dispositions, to take their new tenants bound to perform those services, and accordingly resolved to discontinue them.

No. 88.

Whether a tack of services pres-table by tenants, when clothed with possession, is an effectual right against singular successors in the lands?