

No. 28. by possession on their part, they had never been signed by the Earl. The Lords found the leases ineffectual, and decerned the tenants to remove; but this judgment was reversed on appeal.

*Fol. Dic. v. 4. p. 322. Fac. Coll.*

\* \* This case is No. 52. p. 4392. *voce* FIAR, ABSOLUTE, LIMITED.

1788. July 10.

COLQUHOUN GRANT *against* The REPRESENTATIVES of JAMES RICHARDSON.

No. 29.

A missive letter of tack sustained as effectual, tho' not holograph, the subscription not being denied, and possession having followed.

An action of removing from a farm having been brought against the heirs of James Richardson, they produced, as his and their own title of possession, that of both having been held for several years, a missive letter, addressed to Richardson, and bearing the subscription of the landlord, which contained a promise to grant a nineteen years lease of the lands. With respect to the verity of the subscription, the pursuer, who was trustee for the heirs of the alleged granter, refused either to acknowledge or to deny it; and

Pleaded: Writing is essential to the constitution of every obligation concerning heritage. Such writing must be formal and probative, otherwise it has no legal effect. Not even an acknowledgment on oath, of the verity of the subscription to a writing not holograph, will there supply the want of the statutory requisites. That this is now an established rule, appears from the decisions in the cases of Mackenzie *contra* Park, No. 47. p. 8449. *voce* LOCUS PŒNITENTIÆ, and of Stewart *contra* Besset, in 1765, (see APPENDIX); notwithstanding that formerly the point may have been differently understood.

Answered: Though to the transmission of landed property certain forms and solemnities are required, yet by less formal deeds a person may become effectually obliged to execute the proper legal conveyances for that purpose; Lord Kilkerran *contra* Paterson, No. 43. p. 8440. *voce* LOCUS PŒNITENTIÆ; Neil *contra* Andrew, No. 84. p. 10406. *voce* PERSONAL AND TRANSMISSIBLE. It cannot, then, be doubted, that an obligation to grant a tack may be created in that manner. But *factum de assedatione facienda idem est ac ipsa assedatio*; Craig, Lib. 2. Dieg. 10. § 10.; and, when clothed with possession, such a *factum* cannot be objected to on account of any statutory informality; Crawford *contra* Wight, 16th January, 1739, *voce* WRIT; 20th December, 1746, Foggo *contra* Milligan, IBIDEM; 6th March, 1753, Barron *contra* Duncan, No. 25. p. 15177.

The Lords assoilzied the defenders.

Lord Ordinary, Stonefield. Act. Lord Advocate. Alt. Elphinston. Clerk, Orme.

S.

*Fol. Dic. v. 4. p. 322. Fac. Coll. No. 33. p. 53.*