

granted the same to be redeemed, and discharged the wadset, and confessed the payment of the sum, and took him only to the tack, which behoved to be respected, as if the annual-rent had been legally redeemed;—this allegiance was also repelled, seeing the annual-rent was never redeemed; after which redemption the tack was only appointed to take beginning; and the defender's granting of redemption could not be respected in his prejudice, who was singular successor, to make the tack have beginning, which was conferred to a time, which would never fall forth, seeing the wadset not being valid against this pursuer, the same would never be redeemed, being only personal, and so as he needed never know the wadset, no more could he be obliged to the tack; in respect whereof this exception was repelled.

No. 100.

Act. *Nicolson & Gilmor.*Alt. *Mowat & Gibson.*Clerk, *Scot.**Fol. Dic. v. 2. p. 420. Durie, p. 651.*1671. *June 21.*NEILSON *against* MENZIES.

No. 101.

One possessing by a tack, getting a new tack for a lesser tack-duty presently to commence, it was found, That he might ascribe his possession to the new tack, so as to prefer him to a singular successor.

Fol. Dic. v. 2. p. 421. Stair.

* * Gosford observes this decision differently, as if the second tack were a proration of the first, and to commence after expiry thereof.

See the particulars, No. 20. p. 7768. *voce* JUS SUPERVENIENS AUCTORI, &c.

1676. *February 24.*JOHNSTON *against* CULLEN.

No. 102.

A tack being granted by a husband, to another person, to the behoof his wife, to begin at the first term after the husband's decease, was not sustained against a singular successor; because the said tack was but a personal right, not being cald with possession, and the entry was conferred *in tempus indebitum*, to begin after the husband was denuded.

Found in conformity with
Hamilton v. Tenants,
No. 100.
p. 15230.

Fol. Dic. v. 2. p. 420. Dirleton, No. 346. p. 165.

* * Stair reports this case:

Isabel Cullen pursues the tenants of some tenements in Aberdeen for mails and duties. Her title is a tack granted by her husband to a confident person, to her behoof, as appears by the tenor of the tack, being "to endure during her life;" and, by an assignation granted by the tacksman to her, the entry of which tack is

No. 102. after her husband's death. Compearance is made for the Town of Aberdeen, who have a right to a wadset granted by the husband after the tack; who alleged, that the tack, having its entry after the husband's death, could have no effect against their public infeftment, albeit posterior thereto, because it is possession only that makes a tack effectual against singular successors. It was answered, That the pursuer being provided to a wadset-right by her contract of marriage, and that being redeemed, she had only this tack in place of it; and as base infeftments to wives, though they bear to be in life-rent after their husbands' death, and so can have no possession during their lives, more than this tack, yet they are always sustained in favours of wives on their contract of marriage, or provisions in place thereof. It was replied, That infeftments have symbolical possession, and are valid rights, though base, albeit public infeftments are preferred to them when they are private, *retenta possessione*; but tacks are in themselves only personal, till they attain possession; but if the tack had been to the wife or her trustee, to take present effect, the husband's possession might have validated the same, and so have enjoyed the benefit of the same, *jure mariti*; but if such tacks as these were found valid against singular successors, being latent betwixt conjunct persons, they could never be secured.

The Lords preferred the infeftment to this tack, albeit it was alleged that, by the custom of Aberdeen, infeftment could not be granted to wives, but to men who are burgesses in the burgh.

Stair, v. 2. p. 421.

No. 103.

Effect of an obligation to renew a lease.

1715. February 16. WALTER CARMICHAEL *against* LOCKHART of Cleghorn.

In an action for mails and duties against the tenants of Wester-millrig, at the instance of Walter Carmichael, he produces, as his title, a tack from Sandilands of Boall, proprietor, in favour of Carmichael's predecessors, *in anno* 1618, which bears to be in implement of another tack *in anno* 1597, and acknowledges the receipts of by-gones, and sets the lands for 19 years for an elusory duty containing also an obligation to receive the said Carmichael and his foresaids kindly tenants in the said lands, after the ish of that tack, for £.40 of grassum, at the beginning of each 19 years tack, besides the yearly duty, and to reiterate and renew, as often as need beis, &c. upon which there is a decret of registration *in anno* 1637, and a decret of suspension *in anno* 1638, running in the terms of the tack.

On the other hand, there is produced for Lockhart of Cleghorn, a charter of the said lands, granted by Carmichael of Bonington superior, with a sasine, both proceeding upon a disposition to Cleghorn from his own lady and her sisters, as heirs to Winram of Wiston their father, who had right by an expired comprising against Sandilands.