

No. 20. him in the setter's name, he should be debarred, the charger should be obliged by his warrandice to refund his damage.

Stair, v. 2. p. 852.

1685. February 27. SIR PETER FRAZER *against* HOG.

No. 21.

An obligation to set a nineteen years tack, after a right of excambion should be redeemed, found lawful, and not to fall under the act of Parliament concerning tacks after wadsets. The tack-duty was but £.20, and the lands excambed worth 3000 merks.

Harcarse, No. 958. p. 263.

* * Fountainhall reports this case :

James Hog of Bleredreyn's reduction against Sir Peter Frazer, was reported by Boyne. The Lords, in respect there was a submission, by virtue whereof there was a communing betwixt the parties, and that Kinmunday, the defender's factor, acknowledges that the communing did but lately cease before the extracting of the decreet, therefore they reponed Bleredreyn against the said decreet, and sustained the order of redemption; but in respect, conform to the tenor of the reversion, there was not a tack consigned at the time of the order, therefore the Lords yet ordain the defender to exhibit a tack of the lands conform to the reversion, to commence from Whitsunday next.

Bills were given in against this interlocutor, but the Lords adhered; though it seems impossible to make the nineteen years tack begin only at Whitsunday next, and yet sustain the order; for if the order be valid and legal, the tack must begin when it was used in 1670, and so fifteen years of it will be run.

Fountainhall, v. 1. p. 344.

1715. July 5. CUNINGHAM of Enterkin *against* WILLIAM MILLAR.

No. 22.
Indefinite
contract of
tack of coal.

There being a mutual contract wherein Enterkin sets a tack of coal to Millar, and the tack-duty regulated by the number of coal-hewers to be employed by the tacksman, viz. if six were employed, then 600 merks to be the tack-duty; but if more or less than six, then 100 merks for each was to be added or deducted; and Enterkin having charged on this, the question, at discussing, turned on this single point, viz. Whether, by this tack, the tacksman is liable for 600 merks of yearly duty, though he employed no coal-hewers at all? And it was

Alleged for the charger, That as the suspender could not deny but he was obliged to work, since he had taken a tack of the coal, so also, by the nature of