

## S E C T. V.

Accepting a Tack, Whether it implies Renunciation of the Property;  
Whether it implies Renunciation of a former Tack.

1565. December 18. SINCLAIR *against* MANDERSON.

## No 25.

Taking a short tack prejudices not the tenant of a longer or of a rental, which he had before, unless they differ in *substantialibus*.

ANENT the action pursued by Sinclair of L , against John Mander-son, for removing from certain lands as he that was lawfully warned, it was *alleged* by the said defender, that he should not remove from the said lands, because he has the said lands in liferent, set to him by the pursuer's father, to whom he is heir. It was *alleged* by the pursuer, that the said defender should remove from the said lands, because the said defender took of the pursuer, first seven years tack, and thereafter five years tack, and therefore, howbeit, he has liferent, as he alleges he passes from the same, by reason of taking two tacks. It was *alleged* by the said defender, that the taking of the said tack should not prejudice him in his liferent, because he entered to the said lands by virtue of the said liferent, and has bruiked the same ay since syne; and albeit he had taken such tacks as the pursuer *alleges*, (which he grants not,) he past never from his liferent, but bruiked possession of the said lands by virtue thereof, and not by virtue of the tacks. It was found by the LORDS' interlocutor, that a man having liferent of lands, that albeit he tacks there- after his tack being run out before the liferenter die, that he may bruik the lands by virtue of his liferent, notwithstanding the tacks, they being given from the giver of the liferent, or his heirs; and therefore the LORDS repelled the allegiance of the pursuer, and admitted the defender's allegiance.

*Fol. Dic. v. 1. p. 433. Colvil, MS. p. 162.*

## No 26.

Accepting a tack found to take away an infestment formerly granted by the same au- thor.

1583. November —. CUNNINGHAM *against* COOK.

IN an action of removing pursued by James Cunningham pensioner of Les- mahago, against a woman called Cook, excepted by the defender, that she was heritably infest in the same lands by the pursuer's predecessor, and that long before the warning. *Replied*, that since the date of the said infestment, she had taken tack and assedation of the same man, and so acknowledging herself once to be tackswoman, she behoved to remove after the ish of the said tack. *Duplied*, that the tack could not prejudice her heritable right, at least it was sufficient to stop the removing. To this *triplied*, that after the the common law, *L. 25. Codicis de Loc. et Cond. Si quis conductionis nomine, agrum vel aliam quamcunque rem accepit, possessionem prius restituere debet, et*