

No. 69.
 outrunning of
 the second.
 In a removing
 at the in-
 stance of the
 purchaser of
 the lands, the
 Lords found,
 that the
 tacksmen
 could not de-
 fend himself
 by the third
 tack, the se-
 cond not
 being outrun
 at the time of
 the sale.

to him by the Lairds of Fodderat before the heritable right of the lands libelled acquired by the pursuer; and it was of verity, that there were terms to run of the third tack the time of the warning. It was answered, That the allegiance was not relevant, because the third tack whereupon the exception was founded being conferred *in tempus indebitum*; viz. to enter and begin in such a year, at the which time the setter had no right, but was denuded thereof by heritable alienation of the lands by the pursuer's father; the tack in effect was null, and could not have an entry and beginning after that the setter was denuded thereof, and seeing the said three tacks were not in corpore juris nec in uno contextu et scriptura, but were distincta et separata instrumenta;—in respect whereof, the Lords repelled the allegiance, and found that the tack being *scriptura separata* from the preceding tacks; and never taking entry, nor beginning so long as the father's right endured, it could not begin after that the seller was denuded by the heritable alienation of the lands to the pursuer.

Fol. Dic. v. 2. p. 421. Haddington MS. No. 661.

1604. March 7. PRESTON against TENANTS of DUDDINGSTON.

No. 70.
 Found, that
 tenants hav-
 ing tacks for
 terms to run,
 and other
 tacks, the
 entry whereof
 to be at the
 ish of the
 first, may de-
 fend them-
 selves there-
 by, although
 the lessor
 should sell
 the lands be-
 fore the entry
 of the last
 tack, which
 will not there-
 by be reputed
 to be con-
 ferred in *tem-
 pus indebitum*.

Margaret Preston, relict of Mr. Alexander Thomson, pursued the tenants of Duddingston to remove. They excepted, that they had tacks for terms to run set long before the warning, and long before the pursuer's right granted to them by the pursuer's author, and by virtue thereof in continual possession. It was answered, That the exception was irrelevant, unless they would condescend that the entry was appointed before the pursuer's sasine; because, albeit the tacks were set before the pursuer's sasine, yet the entry thereof being appointed to begin at the issue of the former tacks, which was long after the pursuer's sasine, the said tacks were null, being conferred *in tempus indebitum*, the mid impediment of the pursuer's sasine intervening; notwithstanding whereof, the Lords found the exception relevant, and thought that albeit in spiritual men's feus, and tacks set by them, and not taking lawful beginning in their own time, the same were null; yet the like was not in this case, where the setters and receivers were temporal men, and no interruption made of the tacks, which albeit they were not in one body of a tack, yet being so conveyed that none could intervene betwixt the expiring of the one and beginning of the other, they should be reputed but a conjunct tack; and it was more reasonable that he that acquired the last right should seek his warrant than the poor kindly tenant. Some of the Lords remembered of a practick betwixt the young Laird of Bandovie and ———, where the Duke of Lennox, Prior of St. Andrew's, having set a tack of the teinds of Over Bandovie, having given a bond to the said ——— that he should not set any other tack thereof, whereupon inhibition was raised upon the Duke, nevertheless Bandovie obtained a tack thereof from him, and thereby continued his possession; the Lords would not reduce Bandovie's tack upon the said former tack, bond, and inhibition. There was also a tack set by the

Laird of Halton to Thomas Young, of certain lands in Norton, whereupon Thomas warned Walter Young, tenant and possessor thereof, to remove. Walter excepted upon a tack obtained by him after the warning. It was replied, that tack could not defend him, because he could not take any tack after that he knew the pursuer to have a tack, whereupon he had used warning. It was answered, That he being kindly tenant and old possessor, he might lawfully renew his tack before the term of warning; which the Lords found relevant.

No. 70.

Fel. Dic. v. 2. p. 421. Haddington MS. No. 723.

1612. July 21.

ROSSY *against* His TENANTS.

In a removing pursued by John Rossy against his tenants, the Lords sustained this exception, that they had tack for five years set by his father before his decease, for payment of the old duties; and albeit his father was only life-renter, yet in respect the bairn was a pupil, and the father his administrator of the law; the Lords found the exception relevant.

No. 71.

Kerse MS. No. 103.

1612. July 22.

LAIRD OF TOUCH *against* FAIRBAIRN.

In an action of spuilzie of teinds pursued by the Laird of Touch, as assignee to George Home of Bassendean, tacksman of the Kirk of Gordon, against Fairbairn, son and heir of Henry Fairbairn; the Lords repelled an exception founded upon a contract made betwixt William Home of Bassendean, father to the said George, and umquhile Henry Fairbairn, to the said James, whereby William Home was obliged to deliver to Henry and his heirs the tack of the teinds for nineteen years, the entry at Lammas 1599; and found, that the same could not meet the Laird of Touch, who was singular successor.

No. 72.

Kerse MS. p. 103.

1613. June 9.

COLONEL BALFOUR *against* PARISHIONERS OF CARDROSS.

He who was tacksman of teinds obtaining a new tack, to enter at the expiring of the old, if by virtue of the new tack he continues his possession many years; and thereafter pursuing a tenant for spuilzie, the defender quarrels his tack as

No. 73.