

SECT. XIV.

Tacit Relocation.

1580. *June.* EARL OF MORTON *against* SCOT.

No. 196.

Tacit relocation not presumed where the tenant was not in the natural possession.

The Earl of Morton obtained inhibition upon William Scot, burgess of Edinburgh, charging him to desist and cease from the teinds of K. and kirk-lands of the same, as presently having most right to the same. It was answered by Scot, That he had the kirk-lands in tack, and for payment of a sum *pro indiviso*, and he not being warned from the lands, and occupying them *ex tacita relocatione*, ought not to desist and cease except he had been warned. It was answered, That he could not allege *tacitam relocationem*, nor it was not relevant except he would allege possession. The which allegiance was found relevant by the Lords, and appeared to be conform to the warning of the common law, in lege, Qui ad certum, D. Locati, Nam verba legis sunt, cum dominus patitur colonum in fundo esse, quod presuppositur possidere. Nonnulli doctorum et advocatus doctissimus in contraria fuerunt opinione.

Fol. Dic. v. 3. p. 426. Colvil MS. p. 285.

No. 197.

1610. *July 7.* BRUCE *against* BRUCE.

He who is in possession of lands by tack, or as Mailler, being pursued for a greater duty, if he except *super tacita revocatione*, and it be replied that his possession was interrupted by warning, the reply will not be found relevant, if three years have expired after the warning, without intending removing upon it; albeit the Lords recently of before found a naked warning but summons raised within the three years to be an interruption betwixt Home and the Tenants of Nynewalls.

Fol. Dic. v. 2. p. 427. Haddington MS. No. 1945.

1616. *March 1.* LA. OF CARNOUSIES *against* _____.

No. 198.

In an action pursued by the Laird of Carnousies, the Lords found that the tenant had not the benefit of tacit relocation, except he would allege that he had paid to the principal tacksman, or that the principal tacksman concurred in the defence.

Kerse MS. p. 103.