

No. 178. 1622. *February 23.* CARNEGIE *against* His TENANT.

In an action pursued by Sir John Carnegie of Ethie against a tenant, who was farmer of some of his lands, without any tack or rental, to hear him decerned to find caution for payment of the farms owing to him of certain bygone years, and in time coming, during his occupation, or else to remove from the lands, so that the pursuer might enter thereto, without peril of ejection, conform to the order observed in such cases which are pursued against persons having tacks of lands; which cause being called, and the defender not compearing, the Clerk of the process advised with the Lords, if they would sustain the process against a farmer sicklike as they used to do against a tacksman. The Lords sustained the action, albeit the defender was a naked farmer, and therefore decerned in that case, albeit it was reasoned by some of the Lords, that this preparative tended to take away all actions of removing, and that thereby none would use a warning against their tenants.

Act. *Aiton.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 425. Durie, p. 18.*

No. 179. 1627. *February 27.* LAWSON *against* SCOT.

In an action betwixt Lawson and Scot, to find caution for payment of four bolls victual and an half, which was the duty contained in a tack of lands set to the defender, or else to remove, as usq is in such cases; the Lords sustained the action; albeit it was libelled, that the defender was only resting owing a year's duty preceding the summons, and that it was not libelled that the ground was unplenished; so that although it was but a small yearly duty which was contained in the tack, and so alleged no necessity to find caution, and that only a year's duty was owing; yet the Lords found, that either caution should be found to pay that duty yearly in time coming, or else that he ought to remove; for the tack-duty being little, it was the more easy to find caution.

Act. *Mowat.*

Alt. *Scot.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 425. Durie, p. 283.*

No. 180. 1628. *December 16.* STRAERLY *against* LUNDIE.

In a pursuit, Straerly against Lundie, to find caution, or else to remove, it was not sustained, being sought against a defender who was not libelled as tacksman of the lands for the duties whereof the caution was craved, but only that she