

- No. 80. reduction thereon ; which if it had been proponed, it might have been, that the Lords would have found so, that it ought to have been tried in a reduction, and not so summarily in a removing ; but this was not alleged, but contended, that the tack was sufficient, albeit it had these defects.

Act. *Nicolson.*Alt. *Falconer.*Clerk, *Gibson.**Durie, p. 664.*

* * Auchinleck reports this case :

The Earl Marishal, upon a warning made before Whitsunday, 1632, pursues Fraser, tenant of a room of St. Hauch, to remove. It is excepted, that he has tacks set to him by the Earl's father. It is replied, that the alleged tacks cannot defend him, because they were set after the pursuer was in the fee, and by contract betwixt the father of the pursuer and the Earl, his son, it was only leisom to the father to set tacks during his life-time, and fifteen years after his decease, to the kindly possessor, and without diminution of the rental ; but this tack was set with diminution. To which it was duplied, that the pursuer could not object this nullity, seeing he had continually, since the decease of his father, now by the space of ten years, received by his chamberlains the mails and duties of the said lands, conform to the tack, and therefore has homologated and approved the same ; and seeing there were so few years to run of the tack, he ought to bruik the same for these years as well as he has done for the years by-gone. To which it was answered, that the receipt of the duties contained in the tack was sufficient to defend him from by-gones, but would not hinder the pursuer to annul his tack for time to come ; which the Lords found relevant. Some thought this a hard interlocutor.

Auchinleck MS. p. 199.

1634. *March 14.* BISHOP of ROSS *against* DRUMMOND.

No. 81.

The Bishop of Ross reduced a tack set by his predecessor to Mr. John Drummond, for diminution of the rental, because the land which paid 14 chalders of victual was set in tack for £.100, contrary to the act of Parliament Ja. VI. Parl. 10. Cap. 11. made against conversion of victual in money.

Auchinleck MS. p. 204.

1680. *Februry 5.* RAE *against* FINLAYSON.

No. 82.

The Lords found, That a tack *in prædiis rusticis* did militate against the buyer of the lands, but not *in prædiis urbanis* ; because these used not to be under tack, but only let from year to year.

Fol. Dic. v. 2. p. 417. Stair. Fountainhall.

* * This case is No. 43. p. 10211. *voce* PERSONAL AND REAL.