

No. 30. tacit relocation, for he having no positive right in his person, his tack being expired, he can only maintain his possession upon his author's right, as parson, and so can be in no better case than his author, who if he were compearing, not pleading the benefit of a possessory judgment, he would be excluded by the reply, that he had acknowledged the Earl's right, and taken assignation from him to the tack duty, due by the defenders, which, though it would not be sufficient after the defender's tack, to exclude the same, if it were not expired, yet it is sufficient against his tacit relocation, which can only subsist, while his author hath right and possession, and being but a presumptive continuation of the right, it is easily taken away by any deed of the author. It was answered, that tacit relocation being introduced by law, was as strong as a prorogation, and continuation of the tack, which could not be prejudged by any posterior deed of the parson.

The Lords found the defence upon the parson's right clad with seven years peaceable possession relevant *in judicio possessorio*, to defend the defender's tacit relocation, but found the reply relevant that the parson had accepted assignation from the pursuer, to make the defender liable for the ordinary profits, after the assignation, and after the first inhibition, but only for the tack duty till the first inhibition, and found that the tacit relocation was not in a like case, as if the defender had a tack, or prorogation.

*Stair, v. 1. p. 758.*

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1672. February 27. SCOT against MUIRHEAD.

No. 31.

Teinds were found to be carried by a disposition of lands which contained an assignation to the tacks of the tenants who paid a joint duty for stock and teind.

Mr. John Muirhead having sold certain lands to Walter Scot and his son, they pursue declarator, that thereby they have right to the teinds of the said lands, in so far as the disponer had right, because, by the disposition, though there be no express mention of the teinds, yet the same is implied, in so far as they are assigned to the tenants' tacks without reservation, and they are burdened with £.30 of teind to the Minister, and all subsequent augmentations, and the tenants pay a joint duty, both for stock and teind, and they gave more than twenty years purchase for the rental, comprehending both stock and teind. It was answered, That teinds being distinct rights from lands, the same cannot be conveyed with the lands, unless they be expressed, and not by presumptions or inferences.

The Lords having ordained the comuners, writers, and witnesses in the disposition to be examined *ex officio*, they found little clearness thereby; but, by the tenor of the disposition, they found, that the pursuer had right to the teinds; but, in regard that the conception was so unclear, they allowed the defender to be reponed, refunding the price *cum omni causa*, except the composition to the superior.

*Stair, v. 2. p. 81.*