

No. 117. nalties which he had paid out of the said teinds, seeing he was possessor thereof, and the principal tacksman was not obliged to relieve him. It was answered, That albeit where a tacksman of teinds having right thereto for an usual duty, may be liable for the annuities, yet in this lease, where the sub-tacksman hath in effect a wadset of the teinds for a sum of money, and is nowise obliged to relieve the principal tacksman, if he be forced to pay the same; as possessor, he ought to be relieved, or retain his right until he be paid. The Lords did find the sub-tacksman was not liable to the annuities, and having paid the sum, that he should be relieved, or have retention.

*Gosford MS. p. 357.*

\* \* See 13th November, 1679, *SETON against WHITE*, No. 19. p. 15173.

1674. June 27.

*PEACOCK against LAWDER.*

No. 118.  
Found in  
conformity  
with Thom-  
son against  
Reid, No.  
114. p.  
15239.

There was a tack of some tenements in Edinburgh granted to Peacock to this effect, that for security of 1,000 merks due to Peacock, the tenement was set for seven years, for payment of four pennies yearly, the tacksman giving discharges yearly of the annual-rent, so long as he remained in possession of the tenement; whereupon he pursues declarator against certain apprisers of the tenement, for declaring that this tack was a valid right against singular successors till the money were paid.

The Lords found that the tack was only valid for seven years, and not for the subsequent years.

*Fol. Dic. v. 2. p. 423. Stair, v. 2. p. 274.*

\* \* Gosford reports this case :

In a declarator at George Peacock's instance against John Lawder, as compriser of a tenement from Alexander Eleis, to hear and see it found and declared, that he had a tack of the tenement prior to the comprising, and by virtue thereof in possession; in which tack he had right to the mails and duties by the space of seven years, and thereafter was obliged to accept of the rent of the tenement in satisfaction of the annual-rent due to him by Eleis; whereupon he concluded, that he being obliged as said is, it was equivalent as if the tack had been, that it should continue ay and until he was paid of his principal sum, and so ought to be preferred to the compriser, having a prior real right clad with a possession. It was answered, That the tack being expressly for seven years only, which were long since past, and albeit it could be interpreted of the nature of a tack, yet having no special issue, it was null, and could not prejudge a singular successor, as hath been

found by many several decisions both of old and of late. The Lords did find, that the tack whereupon declarator was founded being expired after seven years, and the subsequent clause bearing no continuation of the former tack, but a personal obligation to accept of the mails of the tenement in satisfaction of the annual-rent, could not prejudge a singular successor; as likewise, if it had been a continuation of the tack without a certain issue, that it was null, and could not defend against an expired comprising, conform to the many practiques alleged upon.

No. 118.

*Gosford MS. p. 418. No. 699.*

1679. *November 13.* SETON *against* WHITE.

No. 119.

Where a tack contains a definite ish, it is good against singular successors, though the tack-duty be wholly allocated for payment of the annual-rents of a sum owing by the setter to the tacksman.

*Fol. Dic. v. 2. p. 422. Fountainhall MS.*

\* \* \* This case is No. 19. p. 15137.

1677. *December 11.* OLIPHANT *against* CURRIE.

No. 120.

About the tack decided where Craig is cited, p. 205. (Edition 1655.) a tack got for an imaginary duty found not quarrelable *in jure*.

*Fountainhall MS. p. 37.*

\* \* \* Stair reports this case:

Charles Oliphant pursues James Currie for the mails and duties of the lands of Nether-Mordingtoun and Edrington, being 1300 merks yearly, with two dozen of kain fowls, conform to a tack set by the master of Mordingtoun to the defender; who alleged absolvitor, because by the same tack, albeit it be 1300 merks of tack-duty, yet it is provided and declared, that it should not be due or paid to the master of Mordingtoun, but shall be retained in satisfaction of the like quantity of annual-rent due by the master to the defender. The pursuer answered, That the tack-duty being *per expressum* 1300 merks to be paid yearly and termly to the master, the same was now due to this pursuer as heritor of the lands, being infeft therein in fee by the master's disposition; and albeit the tack contains a clause of retention, yet that is merely personal, and no more than an assignation to the tack-duty, in satisfaction of the annual-rent; yea, though there had been in the tack an express discharge of the tack-duty, which is *debitum annuale*, it would be effectual no longer than the discharger was heritor, which hath been oftentimes found in discharges of feu-duties, that they could reach no further than the discharger had right. The defender replied, That by express act of Parliament in favours of

A tack for definite years bearing a certain sum to be paid for the tacksman's annual-rent, was found valid against a singular successor infeft, there being a small *superplus* of tack-duty.