

No. 191.  
a person who had thereafter acquired another tack from the same heritor, although the first tacksmen had left his possession, and the lands had been possessed by the heritor for five years before the granting of the second tack.

he alleged, that he could not be pursued therefor, seeing he had acquired a tack of the same lands from the pursuer's author, viz. the Earl of Murray, by virtue whereof he hath been in possession these eight or nine years by-past; and although the pursuer's tack be anterior to his tack, yet he cannot be found to be an unjust possessor, nor *in mala fide* to bruik and continue his possession by virtue of his tack, seeing the Earl of Murray, their common author, being heritor of the land, was five years in possession of the same lands immediately preceding the setting of the defender's tack, and was never interrupted therein by the pursuer; and so the heritor being in possession when he set him the tack, he ought to be maintained in his possession and right; and the pursuer cannot repeat the duties by virtue of his anterior tack, never shewing any deed *quomodo desiit possidere* so long;—this allegiance was repelled, in respect that the pursuer's tack was anterior, and that he offered to prove that it was clad with real possession for the space of ten years together, and that he needed not condescend *quomodo desiit possidere*, for neither the Earl of Murray's nor this defender's possession could be found lawful within the years to run of the pursuer's tack.

Act. Hope & Gibson.

Alt. Hay.

Clerk, Gibson.

Fol. Dic. v. 2. p. 425. Durie, p. 340.

1715. June 14.

DOWNIE against GRAHAM.

No. 192.

A tenant having deserted his possession at Whitsunday, but, at harvest, having offered payment of all his arrears, under form of instrument, and required liberty to cut down the corns, the Lords found the master who refused the offer, and caused reap and inbring them himself, liable in a spuilzie.

Fol. Dic. v. 2. p. 425. Bruce.

\* \* This case is No. 13. p. 14729. voce SPUILZIE.

1728. November 28.

ELIZABETH TAYLOR against SIR WILLIAM MAXWELL of Sprinkell.

No. 193.

A tenant, who had a tack for many years to run, becoming bankrupt, deserted his possession, and left the country. The master thereupon apprehended possession *brevi manu*, without using any legal order. The tenant returning before the expiration of the tack, insisted in an action against her master for re-possession, contending, That the tack was still a subsisting deed, since the master had never insisted in a declarator of any of the irritancies incurred by forsaking the possession, and neglecting to pay the tack-duty. Answered, *Unumquodque dissolvitur eodem modo quo colligatum fuit*: The pursuer, by deserting her possession, had shown her *animus*