

* * * Spottiswood reports this case :

No 29.

IN a removing pursued by the Laird of Johnston against Captain Johnston and others; *excepted* upon a rental granted by the Lord Harris, the pursuer's author, to N. to whom the defender was tacksman. *Replied*, The rental was void, in respect he offered to prove that the rentaller had made a disposition thereof to the defender, and that before the alleged tack, by virtue of which disposition the defender was in possession two or three years, at least one year before the tack. *Duplied*, Not relevant to take away his standing tack, to which he ascribed his possession; for, granting he had taken first such a disposition, thinking he might by law take it, and afterwards being advised by his advocates to take a tack in place of it, his first oversight should not prejudice him, being a countryman unacquainted with the law, especially he having gotten the tack, and possessing by virtue thereof many years before it was challenged. *Triplied*, The rental once being forfeited, the rentaller had no more right to set a tack. THE LORDS repelled the exception in respect of the reply.

Spottiswood, (RENTAL.) p. 290.

1633. January 31. L. CLEGHORN against CRAWFURD.

IN a removing, the defender *alleging*, that she had a rental; the pursuer *replying*, That she had tint the same, in so far as she had set the lands therein to sub-tenants, which was against the nature of the rental, and made the same thereby to expire; THE LORDS sustained the exception, notwithstanding of this answer; for they found, that the in-putting of a sub-tenant to labour the land, was not of that force to make her tine her rental, where there was neither sub-tack, nor any other disposition or deed done by her in writ, alleged by the pursuer.

No 30.
Found in conformity with
Ayton against Tenants, No 24.
P. 7191.

Act. *Mowat.*

Alt. ———

Clerk, *Gibson.*

Fol. Dic. v. I. p. 484. Durie, p. 667.

1734. January.

SIR JOHN HOME of Manderston against MARGARET TAYLOR, and her Husband.

No 31.

THE question occurred, whether a tack set to a woman, secluding assignees, is void upon her marriage? For the affirmative, the authority of Craig was given, L. 2. Dieg. 10. § 6.; Stair, L. 2. T. 9. § 26. On the other hand, it was *pleaded*, That here there is no assignation, because a tack secluding assignees falls not under the *jus mariti*. *2do*, *Esto* there were, the assignation could only be annulled, but not the tack. See Stair, *eadem titulo*, § 16. *in fine*. *Answer*—

No 31.

ed, The administration of the tack, as well as the profits, must in all events be in the husband, which is virtually superinducing another tenant; and this is a virtual assignation that cannot be reduced; and therefore nothing is left but to reduce the tack itself. And this is the very reason given by Lord Stair, Sect. 26. above cited. THE LORDS reduced the tack. See APPENDIX.

Fol. Dic. v. I. p. 485.

S E C T. IV.

Whether Negligence in preserving the Subject infers Irritancy.—Whether Irritancy takes place where the Condition becomes imprest-able.—Irritancy not a Voidance of the Right, making it voidable only.

1540. *May 12.*The KING *against* LAURENCE WARDROP.

No 32.

THE Kingis landis beand set in few for ony cause or causis, and speciallie for policie to be usit and maintenit within the realme, amang his Hienes liegis, gif he to quhome the samin was set, his airis or successouris, destroyis the woddis, growand treis, housis, or biggingis upon the ground, he foirfaltis and tynis his few, with all clame of right quhilk he had in and to the saidis landis; because he fulfillit not the punctis and clauses contenit in the said infestment, bot did the contrare of the samen, aganis all policie and causis quhairfoir the saidis landis were set in few.

Fol. Dic. v. I. p. 485. Balfour, (FEUS.) No 5. p. 171.

No 33.

Lands were mortified to a convent, on condition of saying masses for the soul of the donor. Although such masses came to be prohibited by law, the irritancy took place.

1592. *June.*COCKBURN *against* ———.

COCKBURN, foirgranschir to the Laird of Clerkington, having a bond of the umquhile Grey-friars of Haddington, bearing, that the Friars and their successors were bound and obliged to the pursuer's heirs and successors, to say so many masses, for the souls of the said Laird and his predecessors; and, in case they fail thereof, they should renounce and quit all claim, right, and interest, they had to a piece of land, the Friar-croft; and so pursued the title and right made by the friars, to some indwellers and burgesses of Haddington, to be reduced, and the Laird of Clerkington repute as heir to his foirgrandschir, according to the tenor of the said bond. It was *excepted* against the reason of the summons, That the cause of the fulfilling of the said bond, which was to say so many masses, stood not by them, by reason of the alteration of the religion,