

No. 25. Barron obtained a decret of removing against him before the Sheriff; upon which he was ejected.

In a reduction of this decret, Barron acknowledged his subscription to the letter; but pleaded, that such missive letter, not being holograph, is not a proper writing for constituting a tack for a number of years.

Answered: Whatever might be the case in a question with singular successors, this plea cannot be good to the defender, who acknowledges the contract, and his subscription to the writing, especially after it has taken effect by possession.

“ The Lords sustained the reasons of reduction, and ordained the pursuer to be repossessed.”

Act. *J. Burnet.*

Alt. *And. Pringle.*

Clerk, *Kilpatrick.*

M.

Fac. Coll. No. 72. p. 111.

* * See Lord Kames's report of this case, *voce* WRIT:

1757. *August 10.*

JAMES GORDON of BADENSCOTH *against* ALEXANDER HALL, his Tenant.

No. 26.

Nullities of a tack supplied by the tenant's possession.

A letter being addressed to an heritor, who was minor at the time, by a former tenant, agreeing to become bound to accept of a tack of the same farm, for thirteen years, and to pay a rent which was acknowledged to exceed the old rent in two particulars, viz. eight feet of peats, and a stone of butter; this was found equivalent, against the heritor, to a tack, though the letter bore no date; because it was proved, by the heritor's declaration, that the date of the letter was five years before; and though his curator was not present at receiving the letter, yet he himself became major soon after, and received the additional rent contained in the letter for four years; during which time, as he acknowledged, the tenant possessed upon no other title than the letter.

Act. *Burnett.*

W. J.

Fac. Coll. No. 51. p. 85.

1766. *November 25.*

CAPTAIN JAMES STEWART, Factor on the Estate of Leith-hall, *against* PATRICK LEITH, Tacksman of Christ-kirk.

No. 27.

Tenant's oath in a judicial rental cannot give a verbal set of lands the effect of a written tack.

Patrick Leith, at Whitsunday, 1756, entered to the possession of the lands of Christ-kirk, in consequence of a verbal set from Mr. Leith of Leith-hall; and, after Leith-hall's death, in 1764, Captain Stewart, as factor for Mr. Leith's son, a minor, brought an action before the Sheriff of Aberdeenshire for removing Patrick Leith from these lands. The Sheriff decerned in the removing; and the cause was brought into the Court of Session by suspension.

Leith-hall, before his death, had taken up a judicial rental of his estate, when Patrick Leith compeared, among the other tenants, and emitted an oath, in substance importing, that he possessed the lands of Christ-kirk, and others therein mentioned, by agreement with Leith-hall, for 19 years from Whitsunday, 1756, for payment of a certain tack-duty particularly mentioned; and this oath, subscribed by the tenant, was, by a diligence from the Court, recovered out of the factor's hands, and upon it Patrick Leith founded, as sufficient to support his possession for 19 years, from Whitsunday, 1756. And

Pleaded: That though the law required writing to intervene in bargains with regard to heritable rights, the form of that writing is no where ascertained. It is enough if the intention of parties appear; and, in this case, the agreement of parties is perfectly clear from the tenant's deposition, where the term of entry, the endurance of the tack, and the rent payable, are distinctly specified, and taken down in writing, subscribed by the tenant, and accepted of by the master; which, joined to the possession which followed, and the proprietor's receiving the rent agreeable thereto, must be held as sufficient to support the tenant's defence against the removing.

Answered: The purpose of taking the judicial rental was no other than to ascertain the rents payable by the different tenants, and could not alter the nature of the right or title under which the tenants hold their farms, so as to impose standing leases upon lands possessed by verbal agreement, which, though ever so explicit, are not binding upon either party for more than one year. The oath, in this case, imports no more than that such were the terms of the verbal agreement between Leith-hall and the tenant; but, as the agreement could only be binding for one year, the tenant, by setting forth the terms of that verbal agreement in his oath, which was taken down in writing, cannot invert the nature of that agreement, or create any stronger obligation against the proprietor than what the verbal agreement itself imported.

“ The Court, 5th August, 1766, sustained the reasons of suspension. But, upon advising a reclaiming petition for Captain Stewart, with answers for Patrick Leith, 25th November, 1766, that interlocutor was altered, and the letters found orderly proceeded. And a petition for Patrick Leith against this last interlocutor was, 10th December, 1766, refused without answers.”

For Captain Stewart, *Lockhart & Cosmo Gordon*. For Patrick Leith, *David Rae & Robert Blair*.

Fol. Dic. v. 4. p. 322. Fac. Coll. No. 110. p. 378.

1772. July 23.

COUNTESS DOWAGER OF MORAY, against BAIN, STEWART, and Others.

Objected by the Countess Dowager of Moray to certain leases of land, granted by the late Earl, her husband, That though signed by the tenants, and followed