

\* \* \* 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.

Act. *Mowat.*

Alt. ———

Clerk, *Gibson.*

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

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

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*—