

disposition was not equivalent to a tack ; nor sufficient to defend him against a third party, who was infeft, but only to pursue the granter for implement.

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1665. *January 25.* ALEXANDER BRODIE *against* The TENANTS of NEW-GALLOWAY.

ALEXANDER Brodie, being infeft in the barony of Kenmuir, whereof the lands of New-Galloway are a part, pursues a removing against the tenants of New-Galloway.

It was ALLEGED for the tenants' not removing,—Because the town is erected in a burgh royal, and the pursuer produces no infeftment of the houses and tenements held in burgage.

The Lords repelled the allegiance, unless the tenants would allege that New-Galloway was dismembered from Kenmuir, and that the town of New-Galloway was infeft, holden of the King in burgage, upon the Viscount of Kenmuir's resignation.

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1665. *January 26.* JAMES LOGAN of ———— *against* ELIZABETH GALBRAITH.

THERE is a tenement of land in Leith, called the Catchpail, whereof umquhile William Logan, skipper there, was heritor ; and, by his contract of marriage with Elizabeth Galbraith, he was bound to infeft her in an annualrent of 300 merks forth thereof; whereupon she is infeft, holden of the superior. The said William Logan, her husband, being deceased; and, not being excluded by her contract of marriage, she is likewise kened to a third of the said tenement, after the decease of the said William, her father's brother's son. James Logan of Consone is heir served to him ; and he disposes the said tenement to Richard Logan, his second son ; who pursues removing against the said Elizabeth, she being tenant for the time, after the decease of her husband: and Mary Cave, relict of umquhile John Logan, elder brother to the said Robert, did defend thereupon. Decreet is given *parte comparante*, but nothing proponed for the said Elizabeth ; who, being now charged to remove, suspends, upon this reason, That she is kened to a terce of the said tenement, and so cannot be removed till it be divided ; that she has greater interest in the tenement than the charger, because she is provided to the annualrent of 300 merks forth thereof, long before the charger's right ; for the byruns whereof, she has adjudged the property, and thereupon stands infeft.

To the *first* it is ANSWERED, *1mo.* Competent and omitted, in the foresaid decreet. *2do.* The said tenement being within burgh, there can be no terce of the same. Neither can she allege that she bruiks the two parts *pro indiviso*, the said exception being only in case of lands and tenements, containing several dwelling-houses, which are of their own nature divisible ; which this tenement is not : and to the two parts thereof the pursuer has unquestionable right, and so ought to