

1566. February 8.

M'DOUGAL against CAMPBELL.

No 2.

A tacksman acquiring the property of the lands from the setter of the tack, may, after the infeftment is taken out of the way, recur to his tack to defend himself against a third party.

UTHRED M'DOUGAL of Garthland, heir of line to the Laird of Corswall, warned Alexander Campbell, bastard son to Corswall, to remove from certain lands pertaining to him as heir to Corswall. *Alleged*, That he had tacks of them to run, set to him by his father, which the pursuer, as heir, should warrant to him. *Replied*, He ought not to warrant these tacks to him, because after the date of his tack he had taken heritable infeftment of the same lands, whereby he had past from his tack. *Duplied*, His infeftment was reduced and decerned to have no faith, in respect whereof, his tack should stand in force to him. Which allegiance was found relevant, and the pursuer debarred from removing of the defender, *quia quem de jure tenet evictio, eundem ab agendo repellit exceptio*.

Fol. Dic. v. 1. p. 200. Spottiswood, (DOMINIUM.) p. 84.

* * * Maitland reports the same case :

ANENT the action pursued be Uthred M'Dougal of Garthland, aire of line to the Laird of Creswell, against Alexander Campbell, bastard son to the said Laird ; the said pursuer warned the said defender to remove fra certain lands pertaining to him, as aire to the Laird of Creswell. It was *alleged* be the defender, That he had tacks of the said lands made to him be the said Laird his father, and years thereof to run ; wherefore, the said pursuer, as aire foresaid, should warrant to him the said lands. It was *alleged* be the pursuer, That he should not warrant the same, because after the date of the said tacks, the said defender had taken heritable infeftment thereof, and thereby he past frae his tacks be reason of his infeftment heritably. It was *alleged* be the said defender, That the said infeftment was reduced be the LORDS of Council, and found be their interlocutor and decret, to have no faith, in respect whereof, his tacks should stand in effect, and he had guid action to pursue warrandice thereupon ; whilk allegiance was admittit, and fund be interlocutor, that the said pursuer should warrant the said lands, conform to the tack, notwithstanding the allegiance foresaid of the pursuer.

Maitland, MS. p. 172.

* * * See No 5. p. 3084.

1610. February 23.

LD OF CAUDER against Mr JA. HAMILTON.

No 3.

Found as above.

A MAN who has tacks of land, taking thereafter an infeftment of fee of the same land, with a reservation of another man's liferent, his infeftment will not take away his tack; but he bruike the lands during the years of the tack, and maintain his possession by virtue of the same against the foresaid liferenter du-