

- No. 182. Margaret and her son to find caution for the tack-duty, or else to remove. It is excepted, That such action cannot be granted, except where there is a year's duty unpaid by tacksmen; but here the defenders are only owing a term's duty. To which it was replied, That the pursuer is a poor widow, and has no more to live on but this tack-duty; and the defender puts her termly to pursue for her duty; and also the said Margaret has never subscribed the tack, whereby she is obliged to pay the duty. The Lords, in respect of the pursuer's estate, ordained the defender to subscribe the tack, and to find caution, or else to remove; but this decision is not always observed; and not only may the person to whom the back-tack is set be pursued by this sort of action, but also he that comes in the place of the tacksman, either by comprising or alienation of their lands wadset; Mr. Nicol Ballantine *contra* The Laird of Broad.

Auchinleck MS. p. 199.

1633. July 15. WAUGHTON *against* AICKIN.

No. 183.

If a party be owing a part of his duty, although not the whole, to his master, he may be decerned to remove, or find caution, notwithstanding he have a tack.

Auchinleck MS. p. 201.

1667. January 2. EARL of MURRAY *against* JOHN HUME.

No. 184.

The Earl of Murray pursues Hume, his tenant, to find caution for his duties, or else to remove; who alleged, absolutor, because the Earl was debtor to him in a sum exceeding all the bygone rents, and this action hath no place, but when there are some years rent resting. It was answered, That the defender was at the horn, and his escheat taken, and so was manifestly *vergens ad inopiam*.

The Lords would not sustain this member, unless bygoned had been owing, but superseded to give answer till the compensation were proved.

Fol. Dic. v. 2. p. 425. Stair, v. 1. p. 422.

1672. January 3. LADY BINNING *against* SINCLAIR.

No. 185.

A process against a tenant to find caution for the mails and duties, or else to remove, was not sustained, unless two terms of the tack-duty were resting unpaid.

Fol. Dic. v. 2. p. 425. Stair. Gosford.

* * This case is No. 64. p. 10382. *voce* PERSONAL AND TRANSMISSIBLE: