

Relief, as being only temporary, becomes absolutely null; and that of the grantor thereof viz. the principal Debtor, revives without Necessity of new Impignment.

Sect. 5.

Of Tacks.

(called in England a Lease)

A Tack is a Contract, whereby the Use of Lands or Houses or Fisheries or a Fishing &c is set or let for a Hire, or a reserved Rent, called the Tack Duty, from and to a determined Time. It is also termed an Application, because the Receiver is thereby set or settled in the Subject. The grantor of a Tack is with us called the Setter, whom in England they term the Lessor; the Receiver of a Tack is called the Tenant or Tacksmen whom in England they term the Lessee.

A Tack is either tacit or express.

A tacit Tack is inferred from a Tacksmen's possessing peaceably after his Tack is expired, without being duly warned to remove. For so long as he soth so possess, both the Setter and he are presumed, to continue the Tack of Consent upon the former Terms, till the Tenant be warned or renounce C. 13. s. 1. l. 14. ff. locati. Carproz. jurispru. forens. Part. 2. (art. 37) Tit. 9. Which is called Tacit Relocation, or Renewal of the Tack. But if in a Tack there were Sureties, their Engagement ends with the Tack, and is not continued by the tacit Renewal of it, unless they have renewed their Consent: Because their Obligation was limited to the Term of the Tack in which they engaged themselves C. 13. s. 1. ff. locati. That the Setter of a Tack be deceased and no person Heir to him, the Tacksmen may continue to possess after expiring of the Tack per tacitam relocationem; Quae fictione juris obinet in favorem bonae fidei possidentis, diamsi nullus sit qui relocare possit, Stewart Answers to Dirllet Doubtful Relocation. Tacit Relocation is not only a good Defence to a Tenant against paying for his Possession after expiring of his Tack, more than the former Tack Duty, but also is a good active Title to pursue Intrometers with the Fruits of the Subject set 16 June 1663 E. Errol contra Pari- shioners of Urie. For the tacit Relocation was once found to be no active Title to a Tenant whose Tack was expired 12 Decemb. 1625 L. Laq contra Parishioners of Ligtoun. The Reason was, because in that case the Tenants taking a new Tack to commence a year after the House of the first, without comprehending the intermediate Year and Debate, was a tacit passing from Tacit Relocation. A verbal Tack or simple Use of Payment (whence a verbal Tack is presumed) infers tacit Relocation Stair Lib. 2. Tit. 9. s. 23. And there is a Kind of tacit

-at Relocation by taking Rent before Hand: For during the Time for which forehand Rent was paid, the Dayer cannot be removed by the Setter Craig Foud. Lib. 2. Tit. 9. s. 6. Stair Tit. Tacit Relocation upon a Tack set by a Beneficiary is sustinced for more Years than he could set. And a Liferenter's Tenant is liable for his former Tack Duty of Years he quietly possessed after the Liferenter's Death: Albeit the Liferenter could not set for these 16 January 1663 E. Errol contra Tenants of Urie Stair Lib. 2. Tit. 9. s. 6. And notwithstanding the Benefit of Tacit Relocation, not only to natur et immediate Possessors but also to them as are in the Civil Profession by their Subtenants; which will defend both Tenants and Subtenants till the Tenants be warned to remove 3. March 1626 Douglas contra For it were otherwise what would under Statute in the Custom of Fishes, to convene all Heritors whose Tacks and Subtacks of their own Fishes are long ago secretly expired, for the full Value 31 Years backward, their Tenants of Tack and Subtacks being warned by the natur et Statute? This continues them to uphold accustomed Fish Tacks, seems such a Possession in the Nature of the Subject at least the common Use to tacitly admit it must furnish the Benefit of Tacit Relocation. There is need a Decision (16 March 1632 Lady Lauris' claim contra her Tenants Tenants at first seem to have Tack with what of Advance: But it proceeded upon this Speciality, that the Subtenants passing by the Tacksmen, paying his Rent to the principal Setter, was a personal Objection to hinder him from counteracting his own Deed. Albeit it is a sufficient Defence to Subtenants, that their Master is not warned to remove without Necessity for them to allege that he hath Tacks for Terms to run 2 Decemb. 1628 Whiteford contra L. Johnston. Yet Tacit Relocation of a Tenant cannot defend his Subtenant warned against singular Successors to the Heritor, without instructing a standing Tack the Time of the Warning in the Person of his Constituent 30 January 1663 Ric- hart contra 20 Feb. 1675 C. Murray contra Weir's Tacit Relocation is effectual against the Donatory of Ward, till Warning or Citation Stair Tit. Tacit Relocation being only a presumptive Continuation of the Right, it obligeth no longer than both Parties continue to acquiesce therein. For Tacit Relocation in Lands is taken off by a Warning to remove. But as Warning prescribes and falls to the ground if removing be not pursued thereon within three Years: So in that case it hath no Effect against tacit Relocation. Tacit Relocation ceases in Fishes, if Parsonage, by Inhibition, and if Vicarage by Citation, or Inhibition 28. Novemb. 1676 Sheil contra Parishioners Urie. Supra pag. <sup>How</sup> never seeing citation is a sufficient Interruption of Tacit Relocation in Vicarage Fishes, Inhibition is seldom used