the under-Tenant of his Subtack Duty to the principal Tenant before the Term of Payment of the principal Tack Duty, relevant to defend the Duty or against the Heretor: Seeing otherwise he might pay the whole Terme of the Subtack at his very Entry, and so quite disappoint the Heretor's Claim of any Rent from him. But the Under Tenant may after the Term of Payment before any Arrestment or Precept served against him by the Heretor, bona fide make Payment to the principal Tacksman, justly presuming that he had paid the Heretor who may blame his own Silence in the Matter. Eodem die inter eosdem. The Assigney of a Tack having consented to a Subtack granted by the Tacksman was found liable for the Rent & the Master of the Ground, as possessing by the Subtacksman tho' he did not receive Payment from him 24 Nov. 1674 Paton contra Courtown. Tack Duty is alwise ad-
Tacksmen in dolorum, in so far as their Intromission extends 14 July 1675 College of Aberdeen contra Ky Northesk and others. But it was not Terme competent to the Setter of a Tack to overrule a Subtack consented to by himself upon a Cause irritant in the Subtack, that the same should be null upon the Subtacksmans failing to pay his Duty to the Tacksman at the Terms therein mentioned, who do not quarrell the Subtack; albeit the principal Tack was voluntary. For the principal Setter could not seek Declarator upon the Failzie in the Subtack, till first he got the Right to the Duty thereof established by a Declarator in his Person, as succeeding in Place of the principal Tacksman, ane got the Subtacksman decerned to pay to him 18 Decemb. 1622 Galloway contra M^c Illoch. A Tack of Lands set by a Husband and his Wife for a Tack-Duty payable to the longest Liver of them two, and their Heirs and Assignys was found to intitle the Wife to the Tack Duty after her Husband's Death, in a Competition with his Heir, albeit she had no other Right to the Lands, and was otherwise sufficiently provided. 14 Feb. 1637 Hume contra Hepburn Stair Lib. 2. Tit. 7. § 13. For Nothing hindered the Husband to made the Tack Duty payable to his Wife, more than in Favour of a Stranger.

Since Rent is due for the Profit and Use of the Ground, it is much debated among the Doctors what a Tenant ought to be liable for in the Case of Sterility or Devastation by publick Calamity of War, Pestilence or Inundation, according to the different Nature of Barrenness of Ground. Some account any Ground to be barren, if it produce not half of the ordinary Increase; Some when it affords not a third thereof; and others leave the Determination of Sterility to the common Estimate of the Place, or Arbitrement of the Judge. Our Lawyers (Stair Lib. 1. Tit. 15. § 2. M^c Kenzie Inst. Lib. 3. Tit. 5. § 5.) resolve the Difficulty with this Distinction: If the Ground yield no increase or absolutely barren without the Tenant's Fault, the Hire will not be due; but if there be any free-Profit of the Fruits above the Expenses of labouring and ingathering, the Hire is due. By the Civil Law, there is no Place for this Abatement if either the Tenant expressly by the Pact took the Hazard of Sterility, and agreed to bear no Ease upon that Account; or the Sterility of one Year be compensated and supplied by the Fertility of another L. 15. § 4. ff. locati L. 8. C. eod. Or the Hire be a Proportion of the Fruits

Fruits, when the Tenant is Colonus partiarius that is, holds a Farm on Condition to give to the Proprietor a certain Proportion of the Fruits L. 25. § 6. ff. eod. Such a partiarius colonus can crave Nothing from the Proprietor either for his manuring or sowing the Ground, albeit he should have no Crop at all, for there is between them a Kind of Partnership in which the Proprietor gives the Land, and the Tenant the Seed, Tillage, each of them bearing the Burden of the Fruits which the Partnership imbibes from the Ground. Inst. Lib. 3. Tit. 24. Sect. 5. Art. 2. Therefore some conceive, as in England it is said that the Tenant ought to bear the whole Loss as he is to receive the whole Profit. Vide Gothofred. per text. Dig. 2-15. Yet may may more Tolerament and Remissie amongst Friends relatives in Case of Sterility Devastation &c. as with pious Mind we should do to Tenants; But this Forbearance was allowed to the Subjects of Scotland for the Years 1650 and 1651 the Subjects were impoverished by reason of the English invasion that Season. Beastis and other Goods were seized upon, Corns destroyed, as formerly. Albeit it was provided that the Heretor and Tacksman should be free of Taxation, yet the Tacksman ought to have no Abatement more than the Tacksman of a Neighbour Barony, where he had no Tack Duty. Dryght wise 16 Nov. 1654 Lyon of the Colzeon contra Gordon of Cairnbrogie Factor for the Heretor. The that the Tacksman's Crop was not totally perished, being one Crop between Seasons, and Crop and Year yet the third of the Duty was abated. Vide infra eodem. Lawyers use a Question, whether Sterility supervening the first Year of a Tenant's Possession, and Abatement thereof be given in the same Year? Some hold Negative, as Delayes till the End of the next Year? Some hold Affirmative, and this is clear for the regalities and a third Sort leaning to both, brought Brownman contra Cockburn 6 Dec. 1622 Lord Lee Civilis de Fundo Dotali Lib. 4. Sect. 5. Art. 7. De Re Rustica Lib. 5. Cap. 3. Things I more approve of the Custom of letting out and receiving not to have any Respect to prior or posterior Years: Because such annis tot locationis. What ever Abatement a Tenant may crave upon the Account of Sterility his Tack Duty cannot be augmented upon the Account of extraordinary Plenty and Fertility for Eventum in medium cedere non potest ut Terri L. 25. § 6. ff. locati. Brunem in l. d. l. If a House set in Tack were burnt by an accidental Fire, the Tenant is freed from the Rent, tho' the Fire arose not from any Fault of the Heretor, the House for which the Rent was due being consumed L. 15. § 7. ff. locati. And where a House let becomes so inconvenient, tho' without the Deed of him who let it, as if a Neighbour should by raising his Building darken the Lights of the House let: The Letter is bound to make good the Damage to the Tenant, who may if he pleases vacate the Lease L. 25. § 2. ff. locati. Because the House being let for its Use in the Condition it was in at the Time of Letting, whatever be the Cause that makes it less useful, the Damage falls upon the Letter. But a Tenant of the under Story of a Tenement within Burgh, was not exempted from Payment of his Rent upon this Ground that the Roof of the upmost Story of that same Tenement belonging to a different Heretor was taken off for Reparation of it; whereby the Tenant of the Under Story who was a Vintner had the Rooms of the House forced useless during the Reparation, and his Wines spoiled: In Respect the said Damage was extrinsick, and not occasioned by any Fault of the Heretor of the under Story. 2 Decemb. 1687 Deans of Woodcelly contra Abercromby. A Tacksman of Mills was allowed no Abatement of his Tack Duty, in Consideration of a supervenient De-

clarator