

charter of proximity in favour of several who at the setting of the Tack were thought to have been thirled to the said Mills, and were in Plee to grind all their grans for bading and brewing thereat. In respect no more was set but the Mills and Milltires thereto belonging. J. July 1709 Administrators of Heriots Hospital contra Angus.

A Tack is a sufficient Title to the Tenant for Maile and Duties and in some Cases for removing <sup>gr. pointing as to possession till it expires, and he so does naturally to Francis, Feb 29 1708</sup> <sup>And if set by the Proprietor, as in a p. 13</sup> <sup>several Judgement 13 July 1636 P. of Edinburgh contra Archer Stair p. 8. 8. 10.</sup> <sup>But not if set by one as Liferenter Tenant or Assigny to the Maile and Duties, Dec 1676 Home contra Set Stair p. 10. A Tack set by a Liferenter defends the Tacksmen from being turn'd out of Possession by the Feor, or from paying more than the Liferenter's Tack Duty, till he be duly warn'd to remove, tho' the Tack Duty be small or even clausy, Had. Prath. 6 July 1610 Advice contra Drue. 1 Feb 1631 Blance Winham. Yea Possession by a Liferenter's Servant as Tenant to her of Wh. without a written Tack, was sustained to defend him from present removing without Terms after her Decays without violent death, and he was decern'd to remove without Warning after Separation of the Crop from the ground, and to pay to the Pursuer what Farm such Em is worth, and usually pays: Albeit he staid in the House with the Liferenter, since he paid the Terms, by converting the Profit of the Tack to her Entertainment and Maintenance. 16 Feb 1628 Thomson contra Mearns. And tho' a current Tack suffers Interruption thro' War or a Liferent's taking Effect, Tenants cannot be removed by the Superior or the Liferenter, till the next Whitsunday after their Right commences, tho' Tenants paying to them the Maile and Duties for the Interval Possession Act 26. Par. 3. J. 4. Which they must do, tho' they have made forward Payment of these Duties to their Masters. M'kenzie Obsev. on Act 26. Par. 3. J. 4. And by George M'kenzie (p. 1) saith, if there the Duty in a Tack is simulate and far below the true Rent, Payment thereof by the Tacksmen will maintain his Possession till the subsequent Whitsunday; Such a Forbearance being indulg'd by Law to him for his reasonable Security, and not to prejudice the Superior or Liferenter.</sup>

Tacks by the civil Law were only personal Rights that did not secure against singular Successors in the Property l. 9 C. de locato. For encouraging Tenants to improve Lands, a Statute (Act 17. Par. 6. J. 2.) was made in Scotland to prevent and hinder the removing of them before the full of their Tacks, to whose Hands soever the Lands come. Which was conceived expressly in Favour of poor Labourers of the ground, is extend'd by Curily of Reason to Tacksmen of Houses within Burgh, or of any thing affording Fruit or Profit, as a Fishing in Office or Casualty Stair Lib. 2. Tit. 9. §. 3. But not to Rentallers, because these pay Graspments at their Entry, and but small Tack Duties M'kenzie Obsev. on d. Act. 17. A Tack is a real and effectual Right in suo generis against all singular Successors, whether by Sale, Exchange, Apprising or Rejoindication or any other Way Stair p. 9. 2. It defends against the Superior claiming the Liferent Escheat Stair p. 9. 20. M'kenzie p. 10. because Liferent Escheat is a Casualty falling, not by the Nature of the Fee

as Ward, but by Statute or Custom. Tho' effectual also against Donatories of Bastardie or Ullimus haves or Donatories of Forfeiture, tho' the Tack be not confirmed, if set for an ordinary Duty and just Rent according to the Worth of the Subject at the Time of the ~~set~~ set, without Design to prejudice the Feor. 28 January 1674 G. Dalzell contra Tenants of Caldwell Criss. Feud. Lib. 2. Tit. 10. §. 1. Verum haec de effectuali. M'kenzie p. 10. Tho' no Vestige of any Confirmation of a Tack for securing against the Forfeiture of the Letter appears in our Statute or Practise. For whatever might have been formerly pretended for a conclusion by a Vassal's Forfeiture his grants of the settlement that carry away the Property, or grants of Service for no remuneratory cause profitable to the Superior; there has not the same Reason against Tacks. Because these are not only alike profitable to the Superior and Vassal, but interest Republica that Tenants be secure and ease in their Enjoyments for furthering improvement and Policy and hindering them to side with and follow their Master in his rebellious Courses, which they might be tempted to, if their Interest depended upon his standing or falling. But Tacks set in possession received by the Vassal are an ordinary Duty, and have to be respected and taken care by the Letter's Forfeiture 20 January 1674 G. Dalzell contra Tenants of Caldwell M'kenzie p. 10. And as Sir George M'kenzie (p. 1) saith, the Tacksmen of a Castle was thought by the King's Council obliged to surrender it to the King upon the Letter's Forfeiture; For it was not long continued for labouring the ground. Tacks clothed by possession are now secured by public Law against the Letter's Forfeiture Act 29. Sep. 2. Par. 11. M. A Tack of Lands falling to a Superior by Ward, or to a Liferent against the Letter, sleeps during the Ward or temporary Right, and revives when, after expiring of the temporary Right, the Letter's Right revives Craig. Feud. Lib. 2. Tit. 4. §. 2. Tit. 9. §. 9. Ver. Aliquando et non de minimis. Stair p. 10. M'kenzie Obsev. on Act 26. Par. 3. J. 4. To render a Tack proof against singular Successors, it must be clothed with Possession. 11 July 1627 Wallace contra Herrie Stair p. 9. 7. Possession being the same Thing to Tacks as Seisin is to Dispositions, tho' of old some Tacks had Seisins or Instruments of ~~possession~~ Possession M'kenzie Obsev. on d. Act. 17. Nay Possession is so necessary, that a second Tack with Possession is preferable to the first Tack 23 June 1627 M'millan contra Gordon Stair p. 10. M'kenzie p. 10. If a Tack of Land be first set to one to enter at Whitsunday, and then to another to enter at the same Term, neither of them being in Possession; the Tacksmen first intimating his Right to the present Tenant and requiring him to remove at the Term, or making his Tack publick in any legal Way, would be preferred Stewart Answer to Dirlet Doublet p. 10. The Reason why Tacks without Possession are