

him a greater tocher ; upon which account he might also omit or conceal his debts ; or they are desperate sums, or sums owing by bonds bearing annualrent, and so heritable *quoad relictam*, &c.

*Advocates' MS. No. 274, folio 116.*

1671.      *December 1.*      CRICHTONE *against* CARRUTHERS of Hoilmaynes.

IN this cause the Lords found,—where a man had got a tack of lands, and the same was delivered blank in the ish or endurance of the tack, only the receiver of the tack grants a back-bond of the date of the tack, declaring that the tack was set for nineteen years. Thereafter he fills up eighty years in the tack, and assigns it for onerous causes to a third party. Which third person, after the elapsing of the nineteen years, is warned to remove. He defended upon his tack for years yet to run. REPLIED,—His author, by back-bond of the date of the tack, (and so is *pars contractus et pactum incontinenti adjectum*,) confesses he had got it blank, and that it was to endure but nineteen years. DUPLIED,—The back-bond is nothing to him ; who, seeing a simple tack relative to no back-bond set for eighty years, he was in *bona fide* to take a right thereto, and had paid a sum of money therefore ; and that the pursuer justly suffered, in trusting his cedent with a blank tack.

The Lords found the back-bond could not meet the singular successor, but that the tack behoved to stand good for all the years filled up in it *quoad* him ; unless the pursuer will say that the assignee was *particeps fraudis*, and knew then of the back-bond.

The advocate fought mightily against this interlocutor ; but in my humble opinion it was *bene judicatum*.

*Vide Dury, 21st December 1621, L. Barnbarro. Vide supra, 25th February 1671, numero 154.*

*Advocates' MS. No. 275, folio 116.*

1671.      *December 1.*      HOME and PRINGLE *against* ———.

THIS is a pursuit at a relict's instance, for removing from some lands whereof she was liferentrix.

ALLEGED,—I cannot remove, because having lent a sum of money to the pursuer's husband, he had granted him an heritable right to the said land, to be bruiked by him aye and while the sum lent were repaid to him.

REPLIED,—That right was null, and notwithstanding thereof he must remove ; because, though it bore these words, “ sets, wadsets, dispones, and annalyies,” and though it bore an yearly duty to be paid to this pursuer as a tack-duty, yet in effect it is neither a wadset nor a tack. A tack it was not, because it wanted a definite ish. A wadset it could not be, because it bore no precept of seasine or ob-