

1621. *December 6.* LORD BARGENIE *against* STUART.

In a removing pursued by the Lord Bargenie, against Josias Stuart, who was one of the pursuer's curators, for removing from the house of Bargenie; wherein an exception being proponed by the Laird of Dundas, who was admitted for his interest therein, founded upon a tack unexpired of that house, set to him by the pursuer with consent of his curators, and possession in the tacksman's person; by virtue whereof, and that Josias bruiked by the tacksman's tolerance; the Lords found, That the tack could not hinder the pursuer to remove that person who was once his curator; albeit it was alleged by the tacksman, that he had his tolerance, and that the tack secluded the pursuer to remove any person during the space thereof, or until it was lawfully taken away; and therefore repelled that exception founded upon that tack clad with possession.

Act. Nicolson & Stuart.

Alt. Hope & Nielson.

Clerk, Scot.

Durie, p. 5.

No. 6.

1625. *July 7.* L. AITON *against* TENANTS.

In the action of removing pursued by L. Aiton against his tenants, the Lords found, that a rental, which was set to any person, and had no duty inserted therein, neither in special quantity, nor yet in general terms of service, and duties accustomed to be paid, and so wanted all duty, was null and was not to be sustained; which was found by way of exception.

Fol. Dic. v. 2. p. 417. Durie, p. 174.

* * See this case *voce* VIRTUAL.

No. 7.

1627. *January.* ROSS *against* BLAIR.

In an action of spuilzie betwixt Mr. James Ross and Blair, the Lords sustained an action of spuilzie founded upon a tack, which was alleged to want a duty; because albeit it bore a yearly duty, yet thereby the setter had discharged that duty for ever to the tacksman; seeing he allowed it to him for satisfaction of his bairns part of gear, addebted by him to the said tacksman; which the defender alleged to be alike as if it had not a duty therein inserted; which was repelled; for the Lords found, that this defender had no competent interest to propone this; and if the tacksman were pursued for the tack-duty by any who was singular successor to him who set the tack, that clause would not liberate the tacksman at the hands of that singular successor, albeit it might militate against the setter and his heirs.

Clerk, Gibson.

Fol. Dic. v. 2. p. 418. Durie, p. 266.

No. 8.