

1616. *June 28.*A. *against* B.

No. 199.

In an action of suspension of removing, the Lords found a reason relevant, founded upon the receipt of the taxation since the date of the decret.

*Kerse MS. p. 239.*

1616. *July 20.*CARNOUSIES *against* KEITH.

No. 200.

In an action betwixt Carnousies and Robert Keith, the Lords found that a summons raised upon a warning was sufficient to interrupt, notwithstanding that the party had passed from the removing *pro loco et tempore*.

*Kerse MS. p. 103.*

1618. *January 19.*OGILVY *against* MAIRNS and KEITH.

No. 201.

In an action of removing pursued by George Ogilvy of Carnousies, heritor of the lands of Kyndoch, against Elizabeth Mairns and Robert Keith, her son; the Lords admitted an exception, of payment of duty since the warning, to Thomas Fraser's oath, to whom Carnousies had disposed the land; but declared that albeit the exception be proved, it should not prejudice Carnousies of his violent profits preceding the disposition.

*Kerse MS. p. 240.*

1621. *December 12.*L. LAG *against* The PARISHIONERS of LYNTON.

No. 202.

The Laird of Lag being tacksman of the teinds of the parish of Lynton, pursues against some of the parishioners an action of wrongous intromission with the teinds of the crop 1619, and spuilzie of divers other years thereafter. It was alleged for the defenders, that the action could not be sustained at his instance for the crop 1619, because he had no tack standing of that year; and so he wanting a title, which might give him right to that year's teinds, he could not pursue the defenders for their intromission therewith. It was replied, That albeit he had no present tack standing that year, yet seeing he was kindly tacksman many years before, by virtue whereof he was possessor of the teinds, and had received duties thereof from the same defender, albeit his tack was expired a year or two, preceding this year controverted, yet he bruiking *per tacitam relocationem*; and having renewed his tack again, *in anno* 1620 and having paid his old tack-duty for that same year controverted to the titular, who opposed not against his right, neither troubled the de-

A tacksman of teinds found to have no title to pursue intromitters after his tack was expired, and that he had not the benefit of tacit relocation.

No. 202. fenders for that year's teinds acclaimed either by inhibition or any other deed, which might distress the excipient, they therefore could not quarrel the pursuer's right, nor interrupt his possession and tacit relocation, having no right in his own person, which could purge his intromission, or liberate him of the said teinds that year libelled. The Lords found the exception relevant, and found that the pursuer could not have action for the teinds of that year, whereof there was no tack nor title standing then in his own person; and that the renovation of his tack thereafter, no tacit relocation of the preceding teind intervening betwixt the expiring of the old tack, and acquiring of the new, and paying to the titular the old tack-duty of that year questioned, could not be a sufficient title to sustain the pursuer's action against the defenders.

Act. *Belcher & Cunninghame.*

Alt. *Lawrie.*

Clerk, *Gibson.*

*Fol. Dic. v. 2. p. 426. Durie, p. 6.*

1626. March 3. DOUGLAS against ———.

No. 203.

In an action of spuilzie of teinds pursued by Mr. William Douglas, as prebendary and titular of the teinds, the Lords found, that the defender, being sub-tacksman to one who had a tack standing unexpired the year of the spuilzie libelled, albeit the sub-tack was expired before, and bruiking after the years of that expired sub-tack *per tacitam relocationem*, could not be pursued for spuilzie, the said principal tack being that year unexpired, as said is; albeit the said principal tacksman was deceased, and that none compeared for his heir, or any others who might claim right to the said tack, to clothe themselves with the right of the same; and therefore it was answered, that it was *jus tertii*, which could not defend the excipient, who had no standing right in his own person; notwithstanding whereof the exception was sustained.

*Durie, p. 188.*

1627. March 13. L. LEY against BAR.

No. 204.

In an action betwixt Ley and Bar, for payment of the mails and duties of lands to Ley, as having the right of the ward of him, who held the said lands ward of the Prince; the Lords found, that a tack in the defender's person, clad with possession, was enough to exclude the pursuer for any greater duty acclaimed for the land, than the duty contained in the tack, for all the years preceding the date of that summons; the defender never being interrupted in the tack foresaid, by a pursuit before the date of the summons; and sicklike they found an infestment made by that same person, by whose decease the ward fell to the same excipient, for a certain feu-duty therein contained, relevant to exclude the pursuit, for any greater duty than that which was contained in the said feu-infestment, for the said