

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.

* * Auchinleck reports this case :

No. 8.

Mr. John Ross, assignee to the tack of teind-sheaves, set to Mr. James his father by umquhile John Ross, father to the said Mr. James, pursues William Blair for spuilzie of the said teind-sheaves. It is excepted, that the tack set to Mr. James is *locatio sine mercede*, in so far as the 22 merks are ordained to be paid for the duty of the tack are in that same tack discharged to him for his bairns part of gear. The Lords sustain the tack.

Auchinleck MS. p. 230.

1629. February 18.

PARSON OF KINKELL *against* EARL OF MARISHALL.

No. 9.

The Earl of Marishall being pursued by the Parson of Kinkell for reduction of a tack of his teind set by the parson's predecessors, upon this reason, that the tack wanted the subscription of so many of the Chapter as were requisite, which were condescended upon and alleged living the time of the setting of the tack ; it was alleged by the defender, that the pursuer behoved to prove, that the said persons were lawfully provided to the benefices, whereby they were members of the Chapter. It was replied, That it was sufficient to prove, that the said persons were reputed and holden lawful titulars of the said benefice, and in use to subscribe the like as members of the Chapter ; which reply the Lords found relevant.

Auchinleck MS. p. 232.

1629. March 29.

A. *against* B.

No. 10.

A tack set by the College of Aberdeen of a part of the Dourie, is sought to be reduced for want of the consent of the Chapter. It is alleged by the tacksman, that seeing the Dourie was mortified by the King to the College, it became of the nature of the rest of the College rents, and might as well be set in tack by the members of the College without consent of the Chapter, as the rest of the College rents. The Lords repelled the allegiance, and found the mortification of it could not change the nature of the Dourie, except it had been *per expressum* that the College had power to set tacks thereof without consent of the Chapter.

Auchinleck MS. p. 233.

No. 11.

Consequence
when no term
of entry is
expressed.

1629. December 4.

OLIPHANT *against* GILBERT.

Mr. William Oliphant pursues ——— Gilbert for spuilzie of his teind crop 1628 of Strawbrock, whereunto Mr. William is made assignee for the life-time of