

1628. *December 13.* ———— *against* ————.

AN assignation of a tack duty will not exclude the compriser of the lands, although the comprising be posterior to the assignation.

*Page 14.*

1628. *December 13.* MARK HOME and ———— HUNTLY *against* The LAIRD of RENTONE.

THE goodman of Huttonhall made Mark Home assignee to the tack-duty of Huntliewood, who, conform to his assignation, was alleged to have been in possession two or three years after the assignation. One Huntly, tailor in Edinburgh, in March 1628, arrested the said tack-duty of the term of Whitsunday subsequent, 1628, for a debt owing to him by Huttonhall in April 1628. The Laird of Rentone comprises the lands of Huntliewood. The tenants suspend for triple pouding. The Lords prefer the Laird of Rentone compriser to the other two, as he who had best right to the duty of the lands, by reason he was a singular successor, and had a more real right, which was preferred to the arrester, by reason the debtor to the arrester was denuded of all right he had to the duty of the lands by a legal title, and the arrestment could not affect the duty of the lands, except they had remained in the person of the debtor while the term of payment. And as to the assignation of the tack-duty, this was not *habilis modus* to bruik the duty longer nor the same belonged to the cedent, or otherwise. One might set long tacks, and make assignations to the duty thereof, and so defraud his creditors that should happen to apprise; or, if he sold his lands, should by a prior assignation being a private right, defraud the party buyer of the lands.

*Page 35.*

1628. *December 13.* The LAIRD of LENNOX *against* The LAIRD of NIDDRIE.

A CONTRACT passed betwixt the Laird of Niddrie and Sir James Sandilands, and certain persons whose names were blank; in the which a clause was conceived, whereby Niddrie was obliged to relieve the Laird of Lennox of an action of ejection from the coal of Wolmott, at the hands of certain persons. Whereupon Lennox intents action against Niddrie; and, for proving of his summons, used the said contract, which Niddrie alleged to be imperfect, in respect the third party, whose name was blank, was never filled up, nor yet subscribed the same. To the which it was answered, That although the said contract was not perfected,