

possession, which she might have done after her husband's decease, if her right had been lawful; but suffering the party to break the said victual conform to the decret arbitral, so that now she cannot obtrude that right. Which reply the LORDS admitted to the pursuer's probation. See ESCHEAT.

No 32.

Ae. _____

Alt. Scot.

Clerk, Gibson,

Durie, p. 25.

1628. July 23.

LA. EDNAM *against* The LAIRD.

In an action for pointing of the ground, Lady Ednam, the LORDS found, That a saine of an annualrent, taken at any part of the barony, out of which the annualrent is disposed to be uplifted, where all the lands of the barony ly contiguous, doth affect all the lands and others belonging to the barony, the same lying contiguous as said is; albeit the said saine be not taken at the place definite and appointed for taking of saine in the charter and evidents of that barony, made and granted to him, who is the granter of the annualrent; and there being exception proponed, that the defenders had a tack of the lands, set for an onerous cause by him, who was the pursuer's author, and before the pursuer's right, whereby they *alleged*, That the ground could not be pointed for any more at the pursuer's instance, but for the duty of their tack; seeing, conform to their tack, they were in possession of the land, diverse years before the decease of the fether, and had paid the tack duty to the fether, and had reported his discharge thereon: This exception was found relevant, notwithstanding of this *reply*, That the pursuer's saine was given for implement of her contract of marriage, and so was the more favourable; and the same was more real than a tack, which tack could not maintain the excipients, except it had been clad with possession before her saine; for her husband's possession was her possession, and no subsequent possession of the tackfman, after her right, could make the tack to subsist against her: Which reply was repelled, and the tack sustained, being set for an onerous cause to lawful creditors, and before her saine; which tack being clad with possession in the fether's lifetime, albeit not before the pursuer's right, was found sufficient; and found, that the defenders needed not to allege possession before her right, and so the said exception was admitted. See UNION.

Fol. Dic. v. 1. p. 99. Durie, p. 393.

1631. February 15.

LADY HUTTONHALL *against* L. of TOUCH.

THE Lady Huttonhall being infeft in the lands of Gauldstream, upon her contract of marriage, she, for payment of her husband's debts, consents to the alienation of the same lands, and renounces her liferent therein in April 1621; at

No 33.

A tack was preferred to a base infefment, granted afterwards by the landlord to his wife, though her saine was taken before the tackfman obtained possession.

No 34.

Found in conformity with No 31. P. 1299.