

tenant may be pursued to leave the houses of his matling as good as when he entered.

No 6.

*Fol. Dic. v. 1. p. 376. Haddington, MS. No 1826.*

1629. March 25. L. AFFLECK against MATHIE.

IN a removing, the receipt of an herezeld from the eldest son of the father, who was liferentaller of the land, is sufficient to save the payer from removing from that land for a year after the rentaller's decease. *Item*, a promise not to remove, made by the pursuer, may be proven by witnesses, to save the person to whom the promise is made from removing, for the space of a year only after the promise; and if it be proponed for longer space, it must be therewith alleged, that the promise was then accepted, and must only be proven *scripto*, or by the oath of the maker of the promise. See PROOF.

No 7.  
Receipt of herezeld entitles the heir to possess for an year.

*Fol. Dic. v. 1. p. 377. Durie, p. 439.*

1715. June 23.

GATHARINE SIMSON, and DAVID KELTIE her Son, against HALLIDAY of Tilliboll, and Others.

A DECLARATOR being raised at the instance of the said David Keltie, Tilliboll's feuer, against his superior, who had exacted both at his father's and his own entry a triple of the feu-duty, whereas, by his charter, he is only liable to pay a double *primo anno introitus*, and had also taken away a cow and a mare upon the pursuer's father's decease by way of herezeld; and concluding restitution of the two years feu-duty *indebite* paid; as also restitution and violent profits for the cow and mare, as in a common spuilzie; concluding also a declarator of his freedom from these in time coming;

No 8.  
No herezeld due by feuers but by tenants only.

As to the point of right, *answered* for the defender, That a feu-duty being only a taxing of the service during the time that the fee is full, as when the fee falls in the superior's hands by the death of the vassal *in feudis rectis*, the vassal must either pay a full year's rent, or whatever is taxed by the original charter; so in feu holding, the obligation to double the feu farm is nothing but a taxing the relief to a double feu-duty, and is quite different from the annual prestation. Therefore, as in other holdings, the vassals are bound to pay the relief beside the ordinary prestations, so in feu holdings, by and attour the current feu-duty, the vassal ought to pay the sum to which his relief is taxed, which does not respect the annual prestation, which is due *ex natura feudi*.