

- No. 21. piece of land, stock, and teind, by the space of twenty years or thereby. Afterwards the said James disposes to his son William Garioch the said land of Hauchston, with the teind thereof, and the pertinents; and William assigned his right made to him by his father to Mr. James Forbes, brother to the Laird of Monymusk, with warrandice also of his own proper deed. The said Mr. James pursues the first disponent for the teind of the said piece, disponent to the said Leith of Whitehaugh, as being a pertinent of Hauchston, whereof the teind was disponent by him. The defender alleged, Albeit this piece of ground was sometime a pertinent of Hauchston, yet it was dismembered therefrom, and disponent to Leith of Whitehaugh, who had bruiked the same twenty years severally from the lands to Hauchston, and ought no longer to be reputed as pertinent thereof. The Lords found that the word "pertinents" must be interpreted of such as were the time of the making of the right to Mr. James, and not such rights as were disponent long before.

Auchinleck MS. p. 249.

- No. 22. 1629. *March 13.*
LAIRD OF OLD FARR *against* DRUMMELZIER and LORD YESTER.

A decret obtained against tenants for spoliation of their teinds, who suffered great quantity above the avail to be obtained against them for their contumacy not comparing to depone upon the quantity of the same, being referred to their oath, can infer no lawful distress, whereupon their master being tacksman, can crave warrandice against the letter of the tack, except the quantities had been otherwise proved; but the Lords permitted David Murray, pursuer by the same summons, to prove the just quantity of the said teind, verified, that according thereto he might pursue his warrandice.

Auchinleck, MS. p. 250.

- No. 23.
Eviction by
process.

1629. *June 10.* HARPER *against* BUCHAN.

William Buchan, in Aberbrothick, having sold a bark to William Harper in Borrowstoness, gave his bond for warranting of the said bark free in all water. The said bark was arrested in ———, by William Smith, alleging he had right to the half of the bark from John Symson his brother, which George sold the bark to John Dugail, who disponent the same to the said William Harper; and before the Admiral the said William Symson obtained decree against the said William Harper, notwithstanding that the said Harper did intimate the plea to the said George Symson, and likewise proponed a relevant defence, which was repelled. Harper pursues the said Buchan for warrandice. He compares, and alleges that

he cannot be decerned in warrandice, because the half of the bark was not evicted for want of a good security ; but by the iniquity of the Judge. The Lords ordained William Buchan to warrant the pursuer, and suspended the execution till a certain day, that the defender might reduce the Admiral's decret, if he could.

Auchinleck MS. p. 250.

No. 23.

1629. June 19. LA. PITFERRAN *against* Her SON.

In a contract of marriage, the L. of Pitferran being obliged to infest the Lady, then his future spouse, in the land therein contained ; and at the time of the said contract, some of the lands are standing under long tacks for many years, for small duties, which were set by her husband's father long before the said contract of marriage ; after the death of her husband, and after she had remained many years in possession of the said tack-duty, she charges her son as heir to her husband contracter, upon that clause obligatory foresaid, anent the giving of a valiable infestment to her, to warrant the said infestment from the said tacks, seeing the same were an impediment to the avail and efficacy thereof. The Lords found, that the heir was not obliged to warrant from that tack, it being set before the infestment, and the party not being obliged to warrant the lands from the same *specific* ; for the clause of giving a valiable infestment was found might subsist with the preceding tack, especially the Lady receiving the duty many years after the husband's decease, and she being otherwise well provided of a conjunct-fee.

Act. Nicolson.

Alt. *Advocatus et Lermonth.*

Clerk, Hay.

Durie, p. 447.

No. 24.
Warrandice
against tacks.

1629. and 1630. July 9. HAY *against* LAIRD of PHILORTH.

Hay of Crimonmogat pursues the Laird of Philorth, as heir to his father, to ratify and warrant the alienation of the lands of ———, made to the said pursuer by his umquhile father, and from his own fact and deed, and from the deed of his heirs. Young Philorth. alleged, he would warrant the said bond from any deed done by him since he was heir, or since the contract of alienation made of the said land to the pursuer ; but true it is, that the said young Laird, long before the contract, had disponed such right as he had of the said land in favours of another person, and was not able to warrant that deed done by him so long before his father's obligation, whereby he obliged him and his heirs before he became heir. The Lords repelled the allegiance, and ordained him as heir to warrant the said land from any deed done by him *quovis tempore*, for he had it in his choice to be heir to his father or renounce.

Auchinleck MS. p. 251.

No. 25.
Warrandice
from fact
and deed.