

1631. *February 13.* HENDRY *against* LYON.

A MATTER being referred to a party's oath of verity, and after he was examined, and had deponed upon certain articles, the other party suffers him not to depon any farther, but would resile from his oath. The Lords would not permit him to resile.

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1631. *February 15.* The LAIRD of HERMISTOUN *against* GEORGE BUTLER'S RELICT.

UMQUHILE Mr George Butler caused Windram, his brother-in-law, comprise the liferent of ——— Nicoll, relict of umquhile Vans of Blaus; and the said Mr George takes a tack, from his said brother-in-law, of the said lands, during the lifetime of the said liferenter, for £40 by year: She deceases after Whitsunday 1630, and the Laird of Hermistoun, who had acquired the heritable right of the lands, pursues the tenants and occupiers of the said ground for the half of the farms of the said crop 1630. Compears the relict of Mr George Butler, and alleged, She, as executrix to her umquhile spouse, had right to the hail farms addebted by the tenants, and the heritor had no right but to the half duty contained in the tack set by her brother, compriser of the said Nicoll's liferent. *Secundo*, Because her umquhile husband had bruiked the said lands, by virtue of the said tack set by her said brother, divers years preceding the liferenter's decease; and by virtue of the Act of Parliament made by King James IV, Par. 3, cap. 26, she being tenant, could not be removed, nor compelled to pay to the heritor a greater duty nor she or her husband had been in use to pay to him who had comprised the liferenter's right. To the which it was replied, That the Act of Parliament was conceived in favours only of the tenants, labourers and inhabitants of the lands; and the intention of the Estates was never that, by an interposed person, clad with an imaginary tack, containing such a small duty, the heritors should be prejudged of their duty, which the labourers of the ground paid; in respect that not only should this pretended tacksman get the hail farm of the year wherein the liferenter deceased, but also the next year subsequent, seeing no warning could be made while the Whitsunday after the liferenter's decease; and, although they removed, yet they could carry their crop with them for payment of such duties as they were in use before, *viz.* the tack-duty, being 40*d.* which seems absurd, and altogether against the meaning of the said Act. Notwithstanding, the most part of the Lords found the exception founded upon the tack relevant.

The Lords that voted with the exception were Reidhouse, Newabbay, Prestongrange, Innerteill, Newtown, Innerpeffer, Newhall, Balcomy, and three extraordinarys, *viz.* the Lord Traquair, thesaurer-depute, the clerk-register, and Sir Archibald Atchison, secretary; and the Lords that repelled the exception were Durie, Chester, Fodderance, Balmanno, Kilcruch, and Cranstonriddell. The President was so discontent with the decision, that he resolved not to report the same; and the parties were agreed, and a practique ordained to be made of this interlocutor. But the contrary was decided betwixt the Earl of Buccleugh