

DIVISION XIII.

Contra non valentem non currit Præscriptio.

SECT. I.

Ubi dies non venit.

1631. July 26.

CRIGHTON against LORD AIR.

No 362.
Prescription
of an action
of warran-
dice runs on-
ly from evic-
tion.

THE deceast Edward Lord Sanquhar having set a tack of the lands of Glen-
arie, to umquhile Nicol Crighton, and to his heirs and successors for five years,
and after that space, for other five years, and so forth from five years to five
years for ever, for payment of a certain duty therein contained, which the said
Lord obliged him and his heirs, to warrant to the said Nicol and his heirs, and
that they should never be removed therefrom; the Viscount of Air having
obtained decret of removing against Matthew Crighton, being heir to the
tacksman, he pursues the Viscount as heir to the Lord, setter of the tack, to war-
rant the same; and he *alleging* the tack to be prescribed, and so that no action
could be granted thereon, there having intervened more than 50 years since
the date thereof; and *adly, alleging*, That the tack was null, because it had
no time of ish, but was set for ever, and so not of the nature of a tack; both
these allegiances were repelled, because the prescription was found could not
have place, seeing the pursuer and his predecessors bruiked ever the lands li-
belled, by virtue thereof, while lately within these two years or thereby, that
they were then distressed by the said decret of removing, since which time
the warrandice could only be counted to take beginning to prescribe; and sick-
like the tack was sustained, to produce warrandice against the heir of the set-
ter, albeit it was set without a term of ish, seeing the heir might not object the
same, albeit the singular successor might have opposed the same, which was
found not competent to the heir, for the tack was set to the receiver and his
heirs for ever, and the setter had thereby obliged him and heirs never to re-
move the receiver nor his heirs. This cause was called in November 1631,
and the parties ordained to be heard upon this point, but they agreed amongst
themselves. See TACK.

Act. Stuart.

Alt. Nicolson.

Clerk, Scot.

Fol. Dic. v. 2. p. 123. Durie, p. 600.