

*exemplum in jure per contradictionem non contraversum, non trahendum est in consequentiam.* And I think the terce usually kened by sunny side and shadow *in prediis rusticis*. I scarce can see that kenning can be designed *in urbanis prediis*; or see I what may be the inconvenient in setting the two part and third. *Vide L. Burgenses*, anent the flat, *et de interiore domus parte*, appointed to the widow of a burgesse. Howsoever, Repelled the answer and duply.

Page 19.

1649. June 28. GAWIN SYMPSONE *against* HILL and PUNTOUNE.

IN the process at Gawin Sympsone his instance against Hill and Puntoune,—it was excepted chiefly by Robert Hill, That he could not build a house in that his waste, lest he should wrong the said Robert his lights. To the which it was replied, That the pursuer might build on his own ground as high as he liked, if the defender were not able to show, that he had such a servitude, *ne altius tolleretur aut luminibus officeret*. Which the Lords sustained.

Page 20.

1649. June 29. The TENANTS of GOLDENHOVE *against* COLONEL RAE.

IN the action of retention, for maintenance, quartering, &c. at the instance of the tenants of Goldenhoove, against Colonel Rae, their master, it was excepted, That, by virtue of a clause contained in their tack accepted by them, they should undergo all taxations, impositions, and burdens, and free their master of the same; they could not have retention for the years within their tack, to this time: especially seeing the duty was the same in a former tack, wherein a clause of services therein contained, was, in the posterior, remitted; and, by the clause above specified, as it were innovated: considering also, that the duty of the tack was within the avail. They replied upon the Act anent liferenters, of the 6th session of the 1st triennial Parliament, 1646. But the Lords found that they did not meet, in respect there was a posterior act of maintenance concerning the relief of tenants, in remitting the trial of the worth of lands, and the comparing the same, with the duty paid to the committee of war within the shire; which thir tenants had neglected. The Lords ordained the master to relieve preceding the tacks, conform to the order then standing, and noways during the time of the tack run; and, for the time to come, gave power to the tenants to renounce their tack if they pleased.

Page 20.

1649. June 29. The EXECUTORS of JAMES BARNES *against* ROBERT MASTER-TOUNE.

IN the action of suspension and reduction at the instance of the executors of

James Barnes against Robert Mastertoune, the Lords found the letters orderly proceeded, notwithstanding the reason alleged, founded on umquhile James Barnes his ticket, which was the ground of the pursuit, bearing, that, notwithstanding the obligation therein, they should, as compartners, *ut in contractu societatis*, the said Robert should bear a like hazard and risk with the said James; but so it was that the cairyies which are in question were meddled with by a bankrupt, and, consequently, the said Robert ought to lose as the said James; because the hazard pointed at was, if John Wallace, to whom they were directed as factor, should become *non solvendo*, or should put [them] in an unresponsal man his hand, then they should bear a like risk: or, if the said Robert and James should give order for delivery to any who might be bankrupt, and not where none was so given. But, by the contrary, Wallace being absent, the cairyies were intromitted with by a bankrupt, by the order of the said umquhile James only. There might have been a hazard also understood in bringing them back to the country, if they should have perished, seeing the ticket speaks of the receiving of them, or monies for them, one day after. The Lords would not sustain for the prices conditioned to Barnes, since that given for them in England was proven.

Page 21.

---

1649. June 29. JOHN SPOTTESWOOD *against* KARKETTLE.

IN the action at the instance of John Spotteswood, as assignee constituted by his sister, to the sum of 1000 merks, belonging to her by virtue of a substitution contained in her contract of marriage, bearing, That, failyieing of the heirs of marriage, 2000 merks should go to the husband, his heirs and assignees, and 1000 merks should come to her, her heirs and assignees;—Karkettle, the defender, alleged, That he could not be liable to pay her, seeing the heirs failyied not. But this is not so clear;—because, suppose there were children of the marriage, yet they died before the mother, *nec erant deserviti; quod est apud nos jus acquirendi*. Yea, I think farther, that the substitution should stand till they outlived minority, and, becoming majors, have *liberam rerum suarum administrationem*. And the Lords decerned for the pursuer.

Page 22.

---

1649. June 29. SPENCE *against* —————.

IN the former process at Spence his instance, there being a reason upon antedating or postdating a decret, and the process, with the minutes, being called for,—it was controverted who should deal with the clerk for production. But the Lords ordained the defender, who obtained the decret called for, to deal with the clerk.

Page 22.

---