

No 27. cially if the pursuer allege possession in his own person or his author's, to whom he got back-tack during the non-redemption, in which case the heritor will be preferred in probation.

*Fol. Dic. v. 3. p. 432. Haddington, MS. No 2110.*

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1630. February. MINISTER of Kirknewton *against* BALMERINO.

No 28. THE acceptation of a new tack bearing a greater duty takes away a prior tack containing a less duty.

*Fol. Dic. v. 1. p. 432. Auchinleck, MS. p. 234.*

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1669. June 24.

Mr JOHN JAFFRAY, Minister of Mayboll *against* The HERITORS of Markwood and Grange.

No 29.

Found, that an heritor having a tack of teinds, and afterwards taking a new tack from a new titular, after expiring thereof, may return to his first tack, especially if he never entered on payment of the duty in the last tack.

THE kirk of Mayboll being a kirk of the priory of North Berwick, and upon dismissal of the prioress, being erected in a parsonage, with an express reservation, on a tack set by the prior, or convent, in favours of the Lairds of Bargenny, for several liferents, and nineteen years not yet expired; which tack, by progress, coming in the person of the Laird of Ballinmore, whose author had accepted of another tack from Mr James Bonar, as parson of the said kirk; Mr John Jaffray present minister, pursuing for the teinds of the said lands, Ballinmore, and the heritors having right from him, did defend themselves upon the foresaid tack granted by the prioress and convent, as being yet unexpired. It was *replied* for the Minister, That Ballinmore's author had accepted of a new tack from Mr James Bonnar the parson, and thereby had passed from any former tack, and acknowledged that the parson had the only right to the tithes.

THE LORDS did find, that the acceptation of a new tack from the parson for a distinct greater duty than was in the prior tack, was only sufficient to infer a passing from the first tack, if the second was clad with possession, or payment made of the tack-duty; otherwise they thought, that for eschewing of trouble and plea, the heritors having a valid tack, might take a second, which they never having ratified by payment, after expiring thereof they might return to their first tack, specially in the matter of teinds, whereof the rights are so uncertain; which case they found far different from a tack of lands and heritage taken by the heritor or tacksman from another, pretending *quo casu* they can never debate with the setter of the tack, as not having a valid right.

*Fol. Dic. v. 1. p. 433. Gosford, MS. No 145. p. 56.*