

No 10.

have been agreed upon, for entry to the ground, and labouring the same during the alleged space convened upon; and they found, That albeit the pursuer had bigged barns and byres to the tenant, for his use of labouring, that yet there was no prejudice to the master, seeing they would serve for any other tenant that should enter; neither was it a considerable prejudice, that the tenant entered not at Whitsunday to the grass, as the defender would have inferred. But because the pursuer restricted his summons to the fulfilling of that part of the alternative, alleged condescended upon, viz. either to enter to the land, and keep the tack agreed upon, or else to pay him a year's duty of the land, if he entered not;—THE LORDS sustained that part, viz. for payment of the said years duty, if he liked not to enter to the land; for the which the LORDS found, That the defender could not be heard to resile and pass from that promise, if the same was proven; and therefore the LORDS sustained the action therefor, to be proven by defender's oath, whereanent the LORDS found the defender had no place of repentance.—See PENALTY.

Clerk, Gibson.

*Fol. Dic. v. 1. p. 560. Durie, p. 852.*

No 11.

1671. February 7.

NINIAN HOME *against* FRANCIS SCOT.

NINIAN HOME having charged Francis Scot upon a bond of 550 merks, he suspends on this reason, That both parties having referred the matter verbally to an arbiter, he had determined 200 merks to be paid for all, whereupon Hume had pursued. It was *answered*, That verbal submissions and decreets-arbitral are not binding, but either party may resile before writ be adhibited.

THE LORDS found the reason was relevant to be proven thus, by the charger's oath that he did submit, and by the arbiters oaths that they did accordingly determine.—See PROOF.

*Fol. Dic. v. 1. p. 560. Stair, v. 1. p. 716.*

1699. June 28.

GEORGE LAWSON, Treasurer of Edinburgh, *against* JAMES AUCHINLECK, Chirurgeon Apothecary there.

No 12.

Two parties  
exchanged  
their shares  
in two public  
companies.  
Earnest was  
given, but no  
transfer sub-

CROGERIG reported George Lawson, Treasurer of Edinburgh, against James Auchinleck, chirurgeon apothecary there. They had entered into a bargain by way of set, whereby George exchanged some shares he had in the paper manufactory and African Company, with some shares James had in the Bank, and thereon a guinea of earnest was given. James being pursued on this transaction before the Bailies of Edinburgh, he was decerned to implement and ad-