

1671. June 17.

JOHN BOYD *against* HUGH SINCLAIR.

No. 15.

JOHN BOYD having a right to some teinds in Orkney, pursues Hugh Sinclair as intromitter therewith, who alleged absolvitor, because he had right to a tack, set to umquhile Sinclair during his life, and to his first heir after him, during his life, and nineteen years thereafter, which is not yet expired; for though the defunct's eldest son survived him, yet he was never entered heir to him, neither did he possess these teinds, and died shortly after his father; but it is not nineteen years since the second son died, whose retour is produced, as heir to his father.

The Lords found, That the eldest son surviving his father, although he never possessed, was the first heir as to the tack, and that he needed not be served heir.

*Fol. Dic. v. 2. p. 366. Stair, v. 1. p. 735.*

1675. July 9.

HUME *against* JOHNSTON.

No. 16.

IN a process between Hume and Johnston for removing, and mails and duties, a defence was proponed upon a tack, set to the tacksman during life, and after his decease to his first heir, which was alleged to be yet unexpired, because there was no heir served to the tacksman. It was answered, That there was no necessity to serve heir for the enjoyment of tacks, but the party who had right to be heir might bruik the same, without any service, according to ancient and unquestionable custom, and it was offered to be proven, that the tacksman was dead, and that his eldest son was also dead, who bruiked the lands after his father's death, during his life.

The Lords found, that there was no necessity of a service of the heirs of tacksman, and therefore sustained the allegiance to instruct the expiring of the tack.

*Fol. Dic. v. 2. p. 366. Stair, v. 2. p. 343.*

1739. February 16.

CAMPBELL *against* CUNNINGHAME.

No. 17.

CAPTAIN Charles Campbell, purchaser of a part of the estate of Boquhan, in a sale at the instance of the apparent heir, having craved a deduction from the price effeiring to the value of the teinds, on this ground, That the defunct bankrupt had no right thereto, the alleged right being an old tack of the teinds to one of the defunct's predecessors, to which he had made up no title by service, without which it was pleaded, that though he had right to possess, he could not have conveyed, and therefore the teinds could not be sold by the present apparent heir as an estate that was in the defunct; the Lords " Found, that the defunct having been in pos-

Whether an heir can convey a tack without a service?