

lands, after the expiring of the tack ;" this clause was found sufficient to defend the defender from all removing during the tenant's life-time, albeit the pursuer replied, that the clause ought not to be respected against the compriser, who was a singular successor ; and that he alleged, that it could last no longer than the setter and receiver lived together, and that it should expire by any of their deceases ; likeas the setter was deceased, and so it should expire, and the clause itself could not stand, neither was compatible with the tack, so long as the tack stood unexpired ; and before it expired, that clause could not take beginning, the setter being dead, to whom he should have been kindly tenant admitted ; and before that clause could take effect, the land being comprised, whereby it became void against this compriser, a singular successor ; which reply was repelled, and the clause sustained, as said is.

No. 53.

*Fol. Dic. v. 2. p. 418. Durie, p. 669.*

1675. July 2.

EARL of DUNDONALD *against* GLENAGIES and The EARL of MARR.

No. 54.

A tack of the teinds of Kilmaranoch being set by the Abbot of Cambuskenneth to Sir James Erskine for his life-time, and for the life-time of his heir-male ; and after the decease of the heir-male, for the life-time of his heir-male, and two nineteen years thereafter ; the Earl of Dundonald, having right by progress to the said tack, pursued a spuilzie of the teinds.

It was alleged, That the tack is expired ; and if the Earl of Dundonald will condescend and prove that the said Sir James had an heir-male surviving, the defenders will offer to prove, that two nineteen years had expired since the decease of the last heir-male.

The Lords found, That the pursuer should condescend upon an heir-male, and prove that he survived the said Sir James ; and if he should condescend and prove, that the defender ought to prove (as said is) that the tack was expired ; and did assign to the pursuer and defender to prove respective.

*Dirleton, p. 141.*

1680. June 25.

————— *against* FERME.

No. 55.

One being charged to remove from a shop, suspends, that he had a tack bearing a provision, that he should not be removed, if he found Mr. William Kintore cautioner for the duty. Answered, The tack was null, wanting an ish. The Lords sustained the tack as being during the tacksman's pleasure, which ended with his life, and declared they would accept of no other cautioner than Mr. William, though more responsal, because tacks are *stricti juris*.

*Fol. Dic. v. 2. p. 418. Fountainhall MS.*