

only during the joint lives of the getter and receiver; L. AITON against Tenants, No. 24. p. 7191. *voce* IRRITANCY;

Answered for the defenders: Though a rental to a man and his heirs is not extended to heirs irredeemably so as to want an ish; yet it is by custom extended to the first heir; Earl of Galloway against Burgesses of Wigtoun, No. 25. p. 7193. *voce* IRRITANCY; Ahanny against Aiton, No. 52. p. 15191. and the Lady Bishoptoun is Homer Maxwell's immediate heir. As to the decision betwixt L. Aiton and Tenants, it seems hard, and hath never been followed.

The Lords found that the first heir hath the benefit of this rental, and that it terminates with the first heir's life.

Fol. Dic. v. 2. p. 419. Forbes MS. p. 13.

1717. *January 23.* CARRUTHERS *against* IRVINE.

Carruthers of Holmains, in the year 1680, granted a tack to William Irvine of the following tenor: "Sets, and in rental lets to the said William the foresaid five pound land, as then possessed by him and his tenants, and that perpetually and continually as long as the grass groweth up and the water runneth down, and obliges him and his heirs, &c. to renew the present security and right of the said five pound land to the said William Irvine, his heirs and successors, ay and while they find themselves sufficiently secured in the said lands." In a removing at the instance of the heir of the granter, it was objected, That this tack or rental was null, as wanting an ish. Answered, A tack or rental wanting an ish is indeed not good against singular successors; at the same time it can hardly be doubted but a proprietor has it in his power to grant such an obligation to his tenant, that shall be good against himself and heirs for ever. This is no unlawful obligation, none of those that are reprobated in law. The Lords found, That by the meaning of parties the contract was intended to be a perpetual right to the tenant and his successors; and therefore assoilzied.

No. 59.

Fol. Dic. v. 2. p. 419.

* * See 26th July, 1631, Crichton against Viscount of Ayr, No. 362. p. 11182. *voce* PRESCRIPTION.

1726. *November 24.*

KINDLY TENANTS of LOCHMABEN *against* VISCOUNT of STORMONT.

In a declarator of the Crown's kindly tenants of Lochmaben against Viscount of Stormont, the Lords found, from some ancient documents produced, That the pursuers, though having neither charter nor sasine, but as tenants paying their rents to the Viscount of Stormont, had yet such a right of property in the lands

No. 60.

No. 60. that they could not be removed, and might dispone their rights to extraneous persons. See APPENDIX.

Fol. Dic. v. 2. p. 419.

1730. February 3.

ALISON *against* RITCHIE.

No. 61.

A tack being let for an elusory tack-duty, and for an endurance of 2400 years, was found not to have the benefit of the act of Parliament in favour of tenants, and therefore not good against singular successors. See APPENDIX.

Fol. Dic. v. 2. p. 419.

1737. November 22.

REDPATH of Angelraw *against* WHITE.

No. 62.

In a removing against a tenant, who had entered into possession, in virtue of a minute of tack, which bore no term of endurance, it was pleaded, That a tack wanting an ish, is void and null, Stair, Tit. Tack, § 27. Such a tack must be perpetual or nothing. It is a principle, that all obligations are, in their nature, perpetual; therefore, there can be no *medium*, but either that the tack is null or perpetual; for, supposing it once legally constituted, there is nothing to limit the endurance. Answered, Though other obligations be, in their nature, perpetual, this is inconsistent with the nature of a tack; and therefore it must be *in arbitrio judicis* to fix the time of endurance; and, as to this, there are clauses in the tack, which show it was intended to endure longer than one year, such as, that the tenant is tied to muck a certain quantity of ground yearly, to bring home to his master, every year, twenty loads of coals, &c. The Lords sustained the tack for two years. See APPENDIX.

Fol. Dic. v. 2. p. 420.

1758. December 6.

HIS MAJESTY'S ADVOCATE *against* CAPTAIN JAMES FRASER of BELLADRUM.

No. 63.
Tack for
1140 years
valid

Upon the 8th June, 1670, Hugh Lord Lovat, in consideration of a sum of money advanced, granted a tack to Simon Fraser, his heirs, assignees, or subtenants, of the lands of Fingask, for nineteen years, from Whitsunday 1670; "and after the ish and expiration of the said nineteen years, for all the days, years, and terms of other nineteen years; and at the ish and expiry of the said second nineteen years for all the days, space, and years and time of other nineteen years; and so forth, from nineteen years to nineteen years, during all the years of twenty times nineteen years; and after the expiry of the said space of the said first twenty times nineteen