

## SECT. VII.

## Between Landlord and Tenant.

No 53.

1612. June 13.

LINDSAY *against* HOME.

LANDS being set in tack and thereafter being destroyed by overblowing with sand, will furnish action to the tenant to compel the setter either to grant diminution of the duty, according to the deterioration of the land and proportion thereof, or else to take back his own land, and free the tenant of payment of duty in all time coming.

*Fol. Dic. v. 2. p. 60. Haddington, MS. No 2456.*

No 54.

1662. June 24.

DAVID WILKIE *against* SIR ANDREW KER.

DAVID WILKIE and others, tacksmen of the customs, charged Sir Andrew Ker for the tack-duty of the customs of the border, *anno* 1650, set by them to him. He suspends, and alleges, by the public calamity of the English entry *in anno* 1650 in July traffick was hindered, and by the King's proclamation, against commerce with these. The charger *answered*, it was a casualty *ex natura rei*, and that they had paid without defalcation, and the suspender had profit in former years.

THE LORDS before answer, ordained the suspender to count upon what benefit he got *in anno* 1650, and what profit above the tack-duty in former years.

*Stair, v. 1. p. 113.*

1663. February 20.

BAILIES of EDINBURGH *against* HERITORS of EAST LOTHIAN and MERSE.

No 55.  
Total devastation found to liberate from the tax of public maintenance.

THE bailies pursue these heritors for so much allowed of the maintainance of these shires, of the months of August and September 1650; and insisting on an act of litiscontestation *in anno* 1659, whereby the defenders having proponed a defence of total vastation, the same was found relevant. The defenders having now raised a review, *alleged* that they ought not to have been put to prove total vastation, seeing vastation was notour, these shires being the seat of the war, where the English army lay, which ought to have freed them, un-