

Laird of Halton to Thomas Young, of certain lands in Norton, whereupon Thomas warned Walter Young, tenant and possessor thereof, to remove. Walter excepted upon a tack obtained by him after the warning. It was replied, that tack could not defend him, because he could not take any tack after that he knew the pursuer to have a tack, whereupon he had used warning. It was answered, That he being kindly tenant and old possessor, he might lawfully renew his tack before the term of warning; which the Lords found relevant.

No. 70.

Fel. Dic. v. 2. p. 421. Haddington MS. No. 723.

1612. July 21.

ROSSY *against* His TENANTS.

In a removing pursued by John Rossy against his tenants, the Lords sustained this exception, that they had tack for five years set by his father before his decease, for payment of the old duties; and albeit his father was only life-renter, yet in respect the bairn was a pupil, and the father his administrator of the law; the Lords found the exception relevant.

No. 71.

Kerse MS. No. 103.

1612. July 22.

LAIRD OF TOUCH *against* FAIRBAIRN.

In an action of spuilzie of teinds pursued by the Laird of Touch, as assignee to George Home of Bassendean, tacksman of the Kirk of Gordon, against Fairbairn, son and heir of Henry Fairbairn; the Lords repelled an exception founded upon a contract made betwixt William Home of Bassendean, father to the said George, and umquhile Henry Fairbairn, to the said James, whereby William Home was obliged to deliver to Henry and his heirs the tack of the teinds for nineteen years, the entry at Lammas 1599; and found, that the same could not meet the Laird of Touch, who was singular successor.

No. 72.

Kerse MS. p. 103.

1613. June 9.

COLONEL BALFOUR *against* PARISHIONERS OF CARDROSS.

He who was tacksman of teinds obtaining a new tack, to enter at the expiring of the old, if by virtue of the new tack he continues his possession many years; and thereafter pursuing a tenant for spuilzie, the defender quarrels his tack as

No. 73.

No. 73. conferred *in tempus indebitum*, because the setter died before the entry ; the exception will be repelled as not competent to the proponer.

Haddington MS. No. 2506.

* * * See Home against Home, 9th January, 1612, No. 15. p. 7940. *voce* KIRK
PATRIMONY.

No. 74. 1616. *March 9.* LYNCE *against* His TENANTS.

In action of removing pursued by William Lynce of Drumkillo against his tenants, the Lords found an exception proponed upon ane tack set by Steven of Boyngill not relevant, except it were alleged that Steven was infest ; albeit it was offered to be proved, that Drumkillo was infest upon the resignation of Steven, and that the infestment bore, that the lands pertained of before to the said Steven as immediate tenant to the King. *Ratio decidendi* was, because Drumkillo's infestment proceeded upon the resignation of David Cannon, father to Steven, who was holden of the King ; and albeit Steven's name was used for greater security, yet that was in favours of Drumkillo, and could not be turned to his prejudice.

Kerse MS. p. 103.

No. 75. 1621. *February 25.* WINRAHAM *against* The LORD HENDERSON.

Tack set by a life-renter sustained after her decease in favours of the tacksman, for a small silver duty to the ——— by the tenant, ay and while the tacksman be warned.

The contrary of this decided betwixt Carleshall and Mr. Homer Blair, *in anno* 1600, or 1601, or 1602.

Kerse MS. p. 104.

No. 76. 1621. *November 28.* GAITS *against* His PARISHIONERS.

In an action of spuilzie of vicarage-teinds pursued at the instance of Mr. Patrick Gaits, Minister at Bunckle and Preston, titular of the vicarage, against the heritor thereof, against which an exception was proponed upon a tack, set by the preceding Minister of some of the vicarage teinds, for the space of three years, during the setter's life-time, and for the space of three years after his decease ; and for proving of this exception, the tack of this tenor being produced ; the Lords found it proved not the exception, for the years of the spuilzie acclaimed, which were