

1626. *March 2.* HAMILTON *against* TENANTS.

No. 45.

An obligation to receive parties as tenants as long as they could pay the rent, found to be an indefinite endurance, and so ineffectual.

Sir John Hamilton pursuing a removing against some tenants of Bargenie, wherein one compearing, and alleging, that there were tacks set of the lands to his father and mother, during their life-times, in the which tack the setter obliged him to receive the bairns to be procreated betwixt the tacksmen after their deceases, kindly tenants to him, in the said room, so long as they were able to pay the duty contained in the tack ; in respect of the which clause, the eldest son of the tacksmen alleged, that he had sufficient right to bruik, at least during his life-time, seeing he had ever paid, and was content to find security to pay, the duty of the tack. The Lords found the clause foresaid could give no right to bruik longer than warning was made, because it was neither tack nor rental ; and it had no special time therein limited, for the which it should endure ; and found it ought not to maintain the defender for his life-time, albeit he restricted the space to his life-time, and though the clause was conceived in favours of the bairns *indefinite*, and not in favours of any special person, named in the writ, but uncertain ; and therefore repelled the allegiance ; but here a singular successor pursued.

Act. *Hope.*Alt. *Miller.*Clerk, *Gibson.*

Fol. Dic. v. 2. p. 418. Durie, p. 186.

1626. *March 11.* L. CORSHILL *against* WILSON.

No. 46.

An obligation in a tack to receive the tenant's children as kindly tenants found effectual.

In an action betwixt Wilson defender and the Laird of Corshill, for removing from lands, the defender alleged, that this same pursuer had set a tack of the lands libelled to his umquhile father for his life-time, in the end of which tack the pursuer had obliged himself, to accept the bairns of the said tacksmen, kindly tacksmen to him before all others ; and this defender being the eldest son of his umquhile father who was tacksmen, this bond ought to defend him against this pursuer, granter of the bond. This allegiance being considered by the Lords, they found, that this bond ought to work against the pursuer, to cause him give to the defender a tack upon the like conditions, to be done therefore by the defender, as are in use to be done to the pursuer by others his tenants and tacksmen of the like lands in quality and quantity, answerable proportionally to the lands libelled ; and therefore, if the defender subsumed in his exception, and offered to perform this duty to the pursuer for a tack, as others do for the like ; they sustained this exception upon the bond, to the effect that a tack might be presently perfected to the expient ; and for that end they ordained the pursuer to condescend upon the conditions, which others his tacksmen paid for the like lands ; which being condescended, they found, that they would admit the same to the pursuer's probation, that after the end of the probation, the like conditions being performed to him by this