

No. 110. 1628. July 17. GEICHEN *against* WALKINSHAW.

In a suspension, Geichen against Walkinshaw, of a decret of removing, the Lords found a reason relevant founded upon a contract made betwixt the setter, to whom the charger was heir, or behaved himself as heir, by intromission with his heirship goods and gear after his decease, and the suspender, obliging him not to remove the defender from the house libelled, until the time he paid fifty pounds then borrowed from the suspender, conform whereunto the defunct entered the defender in possession, and by virtue thereof she yet continues in possession, and ought not to remove until her money be paid. This was found relevant against the charger, who was offered to be proved heir, or behaving himself as heir to the contractor, as said is ; but it is not admitted against a singular successor.

*Durie, p. 391.*

No. 111. 1629. January 16. PRINGLE *against* FLEMING.

A tack set to a tacksman, ay and while the said tacksman be paid of a certain sum of money, and the tack-duty assigned to the tacksman for the annual-rent of his money, may not be quarrelled as a tack wanting a certain issue, by one who had no right to the land but an assignation made by the setter for a year's duty ; but if the singular successor agree with the assignee, he may lawfully quarrel the tack.—Hard thought of.

*Auchinleck MS. p. 232.*

No. 112. 1629. June 20. KEITH *against* OGILVIE.

Some lands being wadset by the heritor thereof, and because they were life-rented by another than the heritor, therefore in recompence and excambion thereof, the heritor having set a tack of other lands to the wadsetter, to be bruiked so long as the life-renter of the wadset lands lived ; which tack contained no duty therein insert to be paid therefore ; after the decease of the setter of this tack, his relict being served to the terce of the lands set in tack, and seeking removing therefrom ; it was found, That the tack could not defend the tacksman, seeing it had no duty therein contained, albeit it was granted in recompence of the afore-said wadset ; seeing if it had contained any duty, the tercer would have had right to her proportion of the duty thereof, how little soever it had been.

Act. Baird. Alt. Mowat. Clerk, Gibron.

*Fol. Dic. v. 2. p. 422. Durie, p. 448.*