

- No. 13. a subscribed tack in writ thereupon. After he had bruiked the land one or two years, he renounces his tack. Andrew Lawrie pursues him before the Bailies of Stirling to perfect his promise anent the subscribing of the tack, and summoned him to give his oath *de calunnia*. He is holden *pro confesso*, and the promise is proved by witnesses, and Walter decerned to perfect the tack. He intents reduction of this decret, as unjustly given by probation of witnesses, seeing no more than a year's tack could be proved by witnesses, but that the promise of more years ought to be proved *scripto vel juramento p̄artis*. The Lords ordained Walter to give his oath anent his promise.

Auchinleck MS. p. 234.

1630. February 10. SIR WILLIAM MURRAY *against* _____.

- No. 14. Sir William Murray pursues a tenant who had taken a room from him by a verbal tack, and had been in possession of the room at Whitsunday, and had removed therefrom at Lammas for a year's duty. It was controverted betwixt them concerning the conditions of the contract. The defender offered to prove by witnesses. The Lords found it should be proved either *scripto* or oath of the defender.

Auchinleck MS. p. 235.

1631. July 29. BISHOP of the ISLES *against* M'LEAN.

- No. 15. The reduction of a tack set without the consent of the Chapter, must be libelled in this manner, that the time of setting the tack there was so many of the Chapters living, whose names must be expressed in the libel, and that such and such persons being alive for the time had not subscribed the said tack: Which they found relevant in the action of reduction pursued by the Bishop of the Isles against M'Lean.

1631. November 1.—Notwithstanding, the Lords would not cast the summonses, but suffered the Bishop to mend them, and the party to answer thereto.

Auchinleck MS. p. 234.

* * Durie's report of this case is No. 17. p. 5630. *voce* HOMOLOGATION.

1636. July 16. MR. ROGER MOWAT *against* JOHNSTON.

No. 16.
Verbal Tack.

Mr. Roger Mowat, donatar to the escheat and life-rent of Alexander Keith, pursued one Johnston, to whom the said Alexander had set a verbal five years

tack of a room, to re-enter to the said room, which he had possessed by virtue of the said verbal tack, for the space of two years, and had renounced it the third. The tack was referred to the defender's oath. Alleged, although there had past such a promise between the defender and Alexander Keith, yet it could not bind him, unless writ had followed on it; for a tack being a real right, cannot be perfected without writ, no more than a bargain for lands; otherwise, if that were sustained for a five years tack, it might be as well for a nineteen years tack. Next, it was just that both parties should be alike bound to other, and that it should be as well in the power of the one as of the other to loose themselves of it; but so it is, that if Mr. Rodger, who is singular successor, were pursuing a removing against the defender, this alleged verbal tack, to be proved by Alexander's oath, would not defend him, *ergo*, no more should he be forced to keep this tack to his master, than his master would be to him. The pursuer contended, that there was no necessity of writ in making of this tack, and it being proved by the defender's own oath, was as good as if writ had intervened; as to that, that a singular successor such as the pursuer was, would not be bound to the tenant, answered, That this summons was pursued at Alexander Keith's instance as well as Mr. Roger's; which Alexander referred the verity of the tack set to the defender's oath. To meet this last, the defender debarred Alexander with horning, so that he had to do only with Mr. Roger, who was a singular successor. The Lords found the allegiance relevant against Mr. Roger.

Spottiswood, p. 328.

* * Durie's report of this case is No. 9. p. 8400. *voce* LOCUS PœNITENTIÆ.

1637. February 14.

HUME against HEPBURN.

In a double poinding, umquhile George Hume, and Margaret Hepburn, his spouse, sets a tack of the lands of ——— to ——— his tenant, for payment of certain bolls of victual yearly, during the years of the tack; which tack being set by the husband with consent of his wife, and subscribed by her, albeit she had no right to the lands, neither then nor thereafter, the tacksman is obliged to pay the duty yearly, during the years of the tack, to the longest liver of them two, and thereafter to their heirs and assignees. The husband dying before the expiring of the years of the tack, and this duty being thereafter in a double poinding questioned, if it pertained to the wife after her husband's decease, in respect of the conception foresaid of the words of the tack, or to the son of the marriage, heir to his father, who alleged the same to be due to him, and not to his mother; for albeit she had subscribed the tack, and that the duty was obliged to be paid to the husband and her, and the longest liver of them two, during the space of the tack, and thereafter to their heirs, yet that conception ought not to prejudice him, seeing she had never right to the lands; and albeit she had subscribed that tack, yet that ought not to be respected, seeing the ignorance of tenants, who are in custom

No. 16.

No. 17.

A tack having been let by a proprietor and his wife, and the rent declared payable to the longest liver of them two, it was sustained, although the woman had no right to the lands.