1684. *March.* BISHOP of GALLOWAY *against* INNES of Coxtoun.

No. 56.

The Bishop of Galloway having set a tack of tithes to Mr. John Innes of Coxtoun, during his life, and after his decease during the life of James his eldest son, and for the space of two nineteen years after James's decease; James and his father being both dead, and two nineteen years run since the death of the son, who died first, the Bishop contended that the tack was expired.

Answered: The tack being set for two life-rents, the naming of the son is not to be understood personally, but *designative*; for otherwise the tack would be but for one life-rent.

The Lords found the nineteen years to commence from the death of the father, who survived his son James. But the interlocutor was stopped before pronouncing, till the tack was re-considered.

Harcarse, No. 952. *p.* 268.

1688. *July* 20. JAMES OSWALD *against* ANDREW ROBB.

No. 57.

A tack set to one during his life, and to his heir during his life, containing an obligement upon the setter and his successors to grant tacks in all time coming, for the same duty to the tacksman's heirs as kindly tenants, being quarrelled in a reduction as null for want of an ish;

Answered: An obligement to set a tack is, in Craig's opinion, equivalent to a tack; 2*d*, The ish is certain, at least is made at a definite uncertain time, viz. the failure of heirs of the tacksman; 3*d*, The defender hath acquired a title of prescription by forty years possession, as heir to the first heir in the tack, which hath been found sufficient to validate null tacks, set without issue, and consent of the Patron or Chapter.

Replied: Tacks subscribed without an ish are null; and though tacks null for want of solemnities, as the Patron's or Chapter's consent, &c. may be fortified by prescription, yet tacks null for (defect of) essentials, as the tack-duty or issue, cannot be made effectual by prescription.

The Lords reduced the tack as null for want of an ish.

Harcarse, No. 958. *p.* 270.

1713. *December* 17.

No. 58.
Found in conformity to Ahannay against Aiton, No. 52. p. 15191.

EARL of NITHSDALE *against* ROBERT BROWN of Bishoptoun and His LADY.

The Earl of Nithsdale having pursued a removing against Bishoptoun and his Lady, from certain lands set in rental by the pursuer's predecessor to Homer Maxwell and his heirs indefinitely, upon this ground, that such rental doth last

only during the joint lives of the getter and receiver; L. AITON against Tenants, No. 24. p. 7191. *voce* IRRITANCY; No. 58.

Answered for the defenders: Though a rental to a man and his heirs is not extended to heirs irredeemably so as to want an ish; yet it is by custom extended to the first heir; Earl of Galloway against Burgesses of Wigtoun, No. 25. p. 7193. *voce* IRRITANCY; Ahanny against Aiton, No. 52. p. 15191. and the Lady Bishoptoun is Homer Maxwell's immediate heir. As to the decision betwixt L. Aiton and Tenants, it seems hard, and hath never been followed.

The Lords found that the first heir hath the benefit of this rental, and that it terminates with the first heir's life.

Fol. Dic. v. 2. *p.* 419. *Forbes MS. p.* 13.

1717. *January* 23. CARRUTHERS *against* IRVINE.

No. 59.

Carruthers of Holmains, in the year 1680, granted a tack to William Irvine of the following tenor: "Sets, and in rental lets to the said William the foresaid five pound land, as then possessed by him and his tenants, and that perpetually and continually as long as the grass groweth up and the water runneth down, and obliges him and his heirs, &c. to renew the present security and right of the said five pound land to the said William Irvine, his heirs and successors, ay and while they find themselves sufficiently secured in the said lands." In a removing at the instance of the heir of the granter, it was objected, That this tack or rental was null, as wanting an ish. Answered, A tack or rental wanting an ish is indeed not good against singular successors; at the same time it can hardly be doubted but a proprietor has it in his power to grant such an obligation to his tenant, that shall be good against himself and heirs for ever. This is no unlawful obligation, none of those that are reprobated in law. The Lords found, That by the meaning of parties the contract was intended to be a perpetual right to the tenant and his successors; and therefore assoilzied.

Fol. Dic. v. 2. *p.* 419.

*** See 26th July, 1631, Crichton against Viscount of Ayr, No. 362. p. 11182. *voce* PRESCRIPTION.

1726. *November* 24.

KINDLY TENANTS of LOCHMABEN *against* VISCOUNT of STORMONT.

No. 60.

In a declarator of the Crown's kindly tenants of Lochmaben against Viscount of Stormont, the Lords found, from some ancient documents produced, That the pursuers, though having neither charter nor sasine, but as tenants paying their rents to the Viscount of Stormont, had yet such a right of property in the lands