

1587. *March.* LAIRD OF GOSFORD *against* SINCLAIR.

No 6.

THE Laird of Gosford pursued Sinclair, dwelling at the mill of Gosford, to hear and see a tack reduced of the mill and mill lands. The reason of the summons was founded upon a clause irritant, which was, that if there were terms to run to the third unpaid, the tack should expire.—It was *answered*, That there were three persons nominated into the tack, the mother and the two sons, and there was one of the terms during the time of the mother's liferent, and the not payment of the said time could not prejudice the others contained in the tack, *quia de jure unicuique mora sua sibi nocet et non alteri, D. De regulis juris*; and so the fault of the mother could not prejudice the next that was substituted in the said tack.—To which was *answered. Quod contractus ex questione legem arripuit*; and therefore it being so expressly contained in the said tack, and being *impersonaliter* spoken, that if it should happen two terms to run unpaid into the third, the said contravention ought to have place *specificce*, as it was in the letter of tack.—THE LORDS repelled the exception.

Fol. Dic. v. 1. p. 486. Colvil, MS. p. 424.

1612. *February 13.* LA. OF WEDDERBURN *against* NISBET.

No 7.

IN an action of reduction pursued by the La. of Wedderburn against John Nisbet of Swansfield, for not payment of the feu-duty, *first*, The Lords would grant no action for the feu-mails preceding La. of Wedderburn's infeftment, who acquired the superiority from the La. of ———. *Second*, The Lords found, That the acquittance granted of the years of God 1604, 1605, and 1607, by David Home of ———, factor and chamberlain for the Laird of Wedderburn, who was in use to uplift the mails and duties, was sufficient to induce a liberation of all bygone years, and so in effect found the factor's discharge might purge the clause irritant *postquam cecidit commissio*.

Kerse, MS. fol. 109.

* * * See Haddington's report of this case, No 21. p. 632. *voce* IMPLIED ASSIGNATION.

1614. *June 8.* DISHINGTON *against* LADY PITTENWEEM.

No 8.

IN an action betwixt John Dishington and the Lady Pittenweem, the Lords found a tack should expire for not payment of the duty of the back-tack the same manner as they observe in a tack set to a tenant.

Fol. Dic. v. 1. p. 483. Kerse, MS. fol. 83.