

No. 73. conferred *in tempus indebitum*, because the setter died before the entry ; the exception will be repelled as not competent to the proponer.

Haddington MS. No. 2506.

* * * See Home against Home, 9th January, 1612, No. 15. p. 7940. *voce* KIRK
PATRIMONY.

No. 74. 1616. *March 9.* LYNCE *against* His TENANTS.

In action of removing pursued by William Lynce of Drumkillo against his tenants, the Lords found an exception proponed upon ane tack set by Steven of Boyngill not relevant, except it were alleged that Steven was infest ; albeit it was offered to be proved, that Drumkillo was infest upon the resignation of Steven, and that the infestment bore, that the lands pertained of before to the said Steven as immediate tenant to the King. *Ratio decidendi* was, because Drumkillo's infestment proceeded upon the resignation of David Cannon, father to Steven, who was holden of the King ; and albeit Steven's name was used for greater security, yet that was in favours of Drumkillo, and could not be turned to his prejudice.

Kerse MS. p. 103.

No. 75. 1621. *February 25.* WINRAHAM *against* The LORD HENDERSON.

Tack set by a life-renter sustained after her decease in favours of the tacksman, for a small silver duty to the ——— by the tenant, ay and while the tacksman be warned.

The contrary of this decided betwixt Carleshall and Mr. Homer Blair, *in anno* 1600, or 1601, or 1602.

Kerse MS. p. 104.

No. 76. 1621. *November 28.* GAITS *against* His PARISHIONERS.

In an action of spuilzie of vicarage-teinds pursued at the instance of Mr. Patrick Gaits, Minister at Bunckle and Preston, titular of the vicarage, against the heritor thereof, against which an exception was proponed upon a tack, set by the preceding Minister of some of the vicarage teinds, for the space of three years, during the setter's life-time, and for the space of three years after his decease ; and for proving of this exception, the tack of this tenor being produced ; the Lords found it proved not the exception, for the years of the spuilzie acclaimed, which were

the two years immediately subsequent after the decease of the setter of the said tack, because the first entry of the tack to the first three years thereof was appointed to be at Lammas, and so forth to continue, during the space therein contained; and the setter dying before the Lammas, which behoved to be the tacksmen's entry for these three years, set after the decease of the setter, they found that the said tack therefore could not be sustained to defend by virtue thereof against the spuilzie of any year after the setter's decease, he dying before the entry to that three years tack; which behoved to be ruled by the time of the entry first appointed to the first space of the tack, notwithstanding that the tacksmen was ever in possession, during the setter's life-time, from the date thereof, who survived thereafter a great space.

Act. *Oliphant.*Alt. *Lawrie.*Clerk, *Hay.**Durie, p. 4.*

No. 76.

1622. July 20.

MAKCARRO against ———.

The Lords found, that in a removing pursued by one ——— against Makcarro, that a tenant who had a tack to him *in anno* 1614, to enter at the expiry of the other tack, to be a sufficient defence against the pursuer, who warned upon his infeftment granted to him by their common author *in anno* 1613, long before the date of the defender's tack.

No. 77.

Fol. Dic. v. 2. p. 421. Haddington MS. No. 2655.

* * Durie reports this case :

An exception being admitted to probation against a removing pursued by M'Carro against ——— excipient, bearing, That the excipient had tacks to run for terms the time of the warning; and for proving thereof, two tacks being produced, one whereof the last year of it was expired that year of the warning, and another tack set some years after the first tack, for certain years therein contained, whereof the entry was appointed to begin at the expiring of the other former tack, and which posterior tack was dated by the space of two years preceding the pursuer's right; against which tack it was objected by the pursuer, that the same could not prove the exception, because, albeit the same preceded the pursuer's heritable right, yet seeing the time of the entry thereof was deferred to the time of the expiring of the first tack, before the expiring whereof the pursuer had acquired the heritable right of the lands, and so he was infeft before the time of the defender's entry; and the intervening of that heritable right in his person, who was singular successor in the right of the lands, was a lawful impediment why the second tack, which was a several and distinct right from the first, and not inserted in one body, and to the which the excipient could not be heard to ascribe his possession, in respect of the first tack, at that time standing unexpired, could not be