

*qui fuit casus fortuitus et ad quod nemo tenetur de jure*; and as the Papist's religion was abrogated by the laws of the country; and the sincere and true religion planted; and as the hail kirklands were annexed to the Crown by act of Parliament; therefore the same being done *ex vi et necessitate legis*, the fulfilling of the said bond, by saying and singing of mass, could not be put to the defenders' charges.—THE LORDS found, that the reason of the summons was relevant, and repelled the exception; albeit the defenders alleged thereafter that they had other titles, and verification of the said croft to the said friars.

*Fol. Dic. v. I. p. 486. Colvil, MS. p. 469.*

No 33.

1610. November 8.

SETON against SETON.

ANE tack sought to be reduced, *propter non solutum canonem*, be the space of many years, will not be reducit fra the time of the first failzie, *sed tantum a tempore litis motæ.*

*Fol. Dic. v. I. p. 486. Haddington, MS. No 2175.*

No 34.

1628. January 29. D. of LENOX against HOUSTON.

IN a removing by the Duke of Lenox against Houston, for removing from the house and yards of Inchinnan, pertaining to the Duke, the LORDS found a rental made by umquhile Lodovick Duke of Lenox to this defender, whereby he was rentalled kindly tenant to the Duke of Lenox and his heirs in some acres of land, and also in the keeping of the said house of Inchinnan, to be a sufficient title to exclude the pursuer from this action of removing of him from the said house, wherein he was rentalled keeper as said is; and the exception founded upon the said rental was sustained, albeit it was *replied*, that the same rental was no title to exclude the master from the use of his own house, neither was a rental of that tenor, viz. appointing one to be keeper of the house, of that force as to give a warrant to the receiver, to keep the same longer than the granter pleased; seeing rights to keep castles and houses are constituted by securities of another nature, and more valid in law than such rentals can be of; likeas he *replied*, that the house and yards are all decayed, by the neglect and abuse of this defender, whereby he had fallen from the benefit of the rental; all which was repelled, and the exception sustained. See TACK.

No 35.

Removing was attempted of a kindly tenant of a house, because he had allowed it to fall into decay. Assoiled.

Act. Hope et Burnet.

Alt. ———.

Clerk, Hay.

*Fol. Dic. v. I. p. 485. Durie, p. 334.*