

\* \* Auchinleck reports this case :

No. 8.

Mr. John Ross, assignee to the tack of teind-sheaves, set to Mr. James his father by umquhile John Ross, father to the said Mr. James, pursues William Blair for spuilzie of the said teind-sheaves. It is excepted, that the tack set to Mr. James is *locatio sine mercede*, in so far as the 22 merks are ordained to be paid for the duty of the tack are in that same tack discharged to him for his bairns part of gear. The Lords sustain the tack.

*Auchinleck MS. p. 230.*

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1629. February 18.

PARSON OF KINKELL *against* EARL OF MARISHALL.

No. 9.

The Earl of Marishall being pursued by the Parson of Kinkell for reduction of a tack of his teind set by the parson's predecessors, upon this reason, that the tack wanted the subscription of so many of the Chapter as were requisite, which were condescended upon and alleged living the time of the setting of the tack ; it was alleged by the defender, that the pursuer behoved to prove, that the said persons were lawfully provided to the benefices, whereby they were members of the Chapter. It was replied, That it was sufficient to prove, that the said persons were reputed and holden lawful titulars of the said benefice, and in use to subscribe the like as members of the Chapter ; which reply the Lords found relevant.

*Auchinleck MS. p. 232.*

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1629. March 29.

A. *against* B.

No. 10.

A tack set by the College of Aberdeen of a part of the Dourie, is sought to be reduced for want of the consent of the Chapter. It is alleged by the tacksman, that seeing the Dourie was mortified by the King to the College, it became of the nature of the rest of the College rents, and might as well be set in tack by the members of the College without consent of the Chapter, as the rest of the College rents. The Lords repelled the allegiance, and found the mortification of it could not change the nature of the Dourie, except it had been *per expressum* that the College had power to set tacks thereof without consent of the Chapter.

*Auchinleck MS. p. 233.*

No. 11.

Consequence  
when no term  
of entry is  
expressed.

1629. December 4.

OLIPHANT *against* GILBERT.

Mr. William Oliphant pursues ——— Gilbert for spuilzie of his teind crop 1628 of Strawbrock, whereunto Mr. William is made assignee for the life-time of

Michael Balfour, and for the life-time of two heirs, and two nineteen years tacks thereafter. The tack is set to the person with consent of the Provost and rest of the Prebenders of Kirkheugh, and with consent of William Earl Marishall, and the said Mr. William Oliphant, patron of the said Kirk of Strawbrock, *alternatis vicibus*. The tack has no entry, and is dated 19th June, 1617. It was alleged for the defender, no process upon this tack, because it is null in respect it wants an entry. To which it was answered, that no entry being expressed in the tack, it must be conferred to the time and date of the tack, in respect by virtue thereof the said Mr. William, assignee to the tacksman, has apprehended possession ever since the date of the tack, and the party defender alleged no right in his person of the said teinds. The Lords repelled the exception in respect of the reply.

No. 11.

*Auchinleck MS. p. 233.*

\* \* Durie's report of this case is No. 216. p. 11435. *voce* PRESUMPTION.

1629. December 16. CHRISTIAN HOME *against* HELEN RAMSAY.

Christian Home being infeft in life-rent in four husband lands in Edrom, pursued a removing from these lands against Helen Ramsay. Alleged, That the pursuer and umquhile Robert Home, her husband, by a contract, did oblige them to set a tack of the same lands to the defender for all the days of his life. Replied, That the contract was conditional, bearing, that in case Elizabeth Home, daughter to the defender, and Mr. David Home of Crossrig, (brother to the said umquhile Robert) should marry with consent of the said umquhile Robert Home, that then he obliged him to set a life-rent tack to the defender; but if it happened that she should marry without his consent, then and in that case, the contract to be null in that point; and so, unless the defender would allege that Elizabeth had married with Robert's consent, the obligation was null, in so far as concerned the tack. Duplied, It must be presumed that his consent was given to her marriage, in so far as she was married with his knowlege, being thrice proclaimed, and he never opposing against it, neither at that time, nor after while he lived. The Lords, notwithstanding, repelled the exception, in respect of the reply, except the defender did offer that Robert's express consent was obtained to the marriage.

No. 12.  
Obligation to  
grant a tack.

*Spottiswood, p. 287.*

\* \* Durie's report of this case is No. 22. p. 2964. *voce* CONDITION.

1630. January 19. KER *against* LAWRIE.

Walter Ker takes a verbal tack from Andrew Lawrie in Stirling, of seven acres of land for the space of seven years, and promised to receive from the said Andrew

No. 13.  
Promise to  
grant a tack.