

- No. 21. piece of land, stock, and teind, by the space of twenty years or thereby. Afterwards the said James disposes to his son William Garioch the said land of Hauchston, with the teind thereof, and the pertinents; and William assigned his right made to him by his father to Mr. James Forbes, brother to the Laird of Monymusk, with warrandice also of his own proper deed. The said Mr. James pursues the first disponent for the teind of the said piece, disponent to the said Leith of Whitehaugh, as being a pertinent of Hauchston, whereof the teind was disponent by him. The defender alleged, Albeit this piece of ground was sometime a pertinent of Hauchston, yet it was dismembered therefrom, and disponent to Leith of Whitehaugh, who had bruiked the same twenty years severally from the lands to Hauchston, and ought no longer to be reputed as pertinent thereof. The Lords found that the word "pertinents" must be interpreted of such as were the time of the making of the right to Mr. James, and not such rights as were disponent long before.

Auchinleck MS. p. 249.

- No. 22. 1629. *March 13.*
LAIRD OF OLD FARR *against* DRUMMELZIER and LORD YESTER.

A decret obtained against tenants for spoliation of their teinds, who suffered great quantity above the avail to be obtained against them for their contumacy not comparing to depone upon the quantity of the same, being referred to their oath, can infer no lawful distress, whereupon their master being tacksman, can crave warrandice against the letter of the tack, except the quantities had been otherwise proved; but the Lords permitted David Murray, pursuer by the same summons, to prove the just quantity of the said teind, verified, that according thereto he might pursue his warrandice.

Auchinleck, MS. p. 250.

- No. 23.
Eviction by
process.

1629. *June 10.* HARPER *against* BUCHAN.

William Buchan, in Aberbrothick, having sold a bark to William Harper in Borrowstoness, gave his bond for warranting of the said bark free in all water. The said bark was arrested in ———, by William Smith, alleging he had right to the half of the bark from John Symson his brother, which George sold the bark to John Dugail, who disponent the same to the said William Harper; and before the Admiral the said William Symson obtained decree against the said William Harper, notwithstanding that the said Harper did intimate the plea to the said George Symson, and likewise proponed a relevant defence, which was repelled. Harper pursues the said Buchan for warrandice. He compares, and alleges that