

room two years of the five, the tack not being perfected by writ, but only offered to be proven by the defender's oath, thereafter give over the room to the master, and that thereby he was freed of the tack; the master contending, that he ought to bruik it out during the space agreed upon, the LORDS were of the mind, that albeit the party had by his oath granted the condition, and also that he had confessed that he had laboured the land two years, yet that thereafter he might repent, and that it was lawful to him to quit the room at any year thereafter, before the Whitsunday, and that he was not bound to keep the said tack, it not being perfected by writ, albeit he had bruiked the lands two years of five; so that these sorts of pactions were not found obligatory, except writ had been made thereon; and because Mr Alexander Keith was debarred by horning, and that Mr Robert Mowat, who was donatar to Alexander Keith's escheat and liferent, assisted the pursuit, Alexander himself being debarred, as said is, although the LORDS found *ut supra*, yet the decision run on this ground, that the singular successor might be repelled by this exception, and that the defender had competent place of repentance against him, there being no writ to make the security real, whereby either party contractor and their successors might be equally bound to others.

Act. *Stuart and Mowat.*Alt. *Nicolson and Forbes.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 560. Durie, p. 816.*

1637. July 15.

SKEEN against ———.

MR ANDREW SKEEN of Halyards, pursues ———, for entry to the lands of ———, which were set by him to the said tenant, conform to an appointment faithfully accorded, and convened fully upon, betwixt them, whereby the said Mr Andrew set the lands to the said tenant, for the space of years, for payment of such a duty condescended on in the summons, at the which time the said tenant promised, that if he entered not to the lands, conform to the said agreement, that then he faithfully promised to pay a year's duty for the said lands, and therefore pursued him to enter and keep the bargain, which he referred to his oath. And the defender *alleging*, That there was place of repentance; likeas immediately after the conference concerning the said bargain, he gave it over, and declared that he could not stand to the same, which he did, and might have passed from that conference, seeing nothing had followed further thereupon; and the pursuer sustained no prejudice, the conference being had about Whitsunday last, at which time the ground was laboured by the tenant indweller therein; and before the crop be separated, he had, and has sufficient time to provide for another tenant;—THE LORDS found, That there was place for repentance to the tenant to quit the bargain *rebus integris*; and that he could not be compelled to keep the condition libelled, to

No 9.

Found entitled to quit possession at any term, no writ having intervened.

No 10.

Lands were let verbally. The tenant did not enter, though the master built barns, &c. for him. He was not bound to perform, but was liable for an agreed penalty to be proved by his oath.

No 10.

have been agreed upon, for entry to the ground, and labouring the same during the alleged space convened upon; and they found, That albeit the pursuer had bigged barns and byres to the tenant, for his use of labouring, that yet there was no prejudice to the master, seeing they would serve for any other tenant that should enter; neither was it a considerable prejudice, that the tenant entered not at Whitsunday to the grass, as the defender would have inferred. But because the pursuer restricted his summons to the fulfilling of that part of the alternative, alleged condescended upon, viz. either to enter to the land, and keep the tack agreed upon, or else to pay him a year's duty of the land, if he entered not;—THE LORDS sustained that part, viz. for payment of the said years duty, if he liked not to enter to the land; for the which the LORDS found, That the defender could not be heard to resile and pass from that promise, if the same was proven; and therefore the LORDS sustained the action therefor, to be proven by defender's oath, whereanent the LORDS found the defender had no place of repentance.—See PENALTY.

Clerk, Gibson.

Fol. Dic. v. 1. p. 560. Durie, p. 852.

No 11.

1671. February 7.

NINIAN HOME *against* FRANCIS SCOT.

NINIAN HOME having charged Francis Scot upon a bond of 550 merks, he suspends on this reason, That both parties having referred the matter verbally to an arbiter, he had determined 200 merks to be paid for all, whereupon Hume had pursued. It was *answered*, That verbal submissions and decreets-arbitral are not binding, but either party may resile before writ be adhibited.

THE LORDS found the reason was relevant to be proven thus, by the charger's oath that he did submit, and by the arbiters oaths that they did accordingly determine.—See PROOF.

Fol. Dic. v. 1. p. 560. Stair, v. 1. p. 716.

1699. June 28.

GEORGE LAWSON, Treasurer of Edinburgh, *against* JAMES AUCHINLECK, Chirurgeon Apothecary there.

No 12.

Two parties
exchanged
their shares
in two public
companies.
Earnest was
given, but no
transfer sub-

CROGERIG reported George Lawson, Treasurer of Edinburgh, against James Auchinleck, chirurgeon apothecary there. They had entered into a bargain by way of set, whereby George exchanged some shares he had in the paper manufactory and African Company, with some shares James had in the Bank, and thereon a guinea of earnest was given. James being pursued on this transaction before the Bailies of Edinburgh, he was decerned to implement and ad-