

SECT. VII.

Between Landlord and Tenant.

No 53.

1612. June 13.

LINDSAY *against* HOME.

LANDS being set in tack and thereafter being destroyed by overblowing with sand, will furnish action to the tenant to compel the setter either to grant diminution of the duty, according to the deterioration of the land and proportion thereof, or else to take back his own land, and free the tenant of payment of duty in all time coming.

Fol. Dic. v. 2. p. 60. Haddington, MS. No 2456.

No 54.

1662. June 24.

DAVID WILKIE *against* SIR ANDREW KER.

DAVID WILKIE and others, tacksmen of the customs, charged Sir Andrew Ker for the tack-duty of the customs of the border, *anno* 1650, set by them to him. He suspends, and alleges, by the public calamity of the English entry *in anno* 1650 in July traffick was hindered, and by the King's proclamation, against commerce with these. The charger *answered*, it was a casualty *ex natura rei*, and that they had paid without defalcation, and the suspender had profit in former years.

THE LORDS before answer, ordained the suspender to count upon what benefit he got *in anno* 1650, and what profit above the tack-duty in former years.

Stair, v. 1. p. 113.

1663. February 20.

BAILIES of EDINBURGH *against* HERITORS of EAST LOTHIAN and MERSE.

No 55.
Total devastation found to liberate from the tax of public maintenance.

THE bailies pursue these heritors for so much allowed of the maintainance of these shires, of the months of August and September 1650; and insisting on an act of litiscontestation *in anno* 1659, whereby the defenders having proponed a defence of total vastation, the same was found relevant. The defenders having now raised a review, *alleged* that they ought not to have been put to prove total vastation, seeing vastation was notour, these shires being the seat of the war, where the English army lay, which ought to have freed them, un-

less the pursuers had *replied*, that the heritors got rent that year, and had been burdened with the probation thereof. *2dly*, The order of Sir John Smith's general commissary, and also of the provisors of the army, bearing the provisors to have furnished such provisions want witnesses, and might have been made up since they were out of their offices.

THE LORDS adhered to the act, and found the defence of total devastation yet relevant in this manner, that the heritors got no rent; and granted commission to receive witnesses, at the head burghs of the shires, for each particular heritor, to prove their particular devastations; and sustained the order of the general commissary, he making faith that he subscribed an order of the same tenor while he was in office.

Stair, v. 1. p. 184.

No 55.

1667. January 2.

FRANCIS HAMILTON *against* —

FRANCIS HAMILTON having suspended a decret, obtained against him for house-mails, on this reason, that his wife only took the tack, which could not oblige him; it was *answered*, that his wife keeping a public tavern, was evidently *præposita huic negotio*;

Which the LORDS sustained.

Another reason was, that the house became insufficient in the roof, and the defender, before the term, required the pursuer to repair the same, which he did not; and the neighbouring house, called, *The Tower of Babel*, falling upon the roof, made it ruinous. It was *answered*, That was an accident without the pursuer's fault, and the tenant ought to pursue those whose tenement it was that fell.

THE LORDS found the reason was not relevant to liberate from the mail, unless the suspender had abstained to possess; but found it relevant to abate the duties in so far as he was damnified.

Fol. Dic. v. 2. p. 60. Stair, v. 1. p. 422.

No 56.
The damage sustained by the tenant of a house, in consequence of the fall of a neighbouring house allowed out of his rent.

1667. November 20. TACKSMEN of the Customs *against* GREENHEAD.

THE customs of the Borders being set in sub-tack to Greenhead and others, by the Tacksmen of the hail customs of the kingdom; Greenhead is pursued as representing his father, one of the sub-tacksmen, for the duty the year 1650. It was *alleged*, That the sub-tack was altogether unprofitable, upon the occasion of the English invasion; so that beasts and other goods were not im-

No 57.
Abatement was allowed to the tacksmen of the customs, in consequence of the invasion of an enemy.