1696. *July* 15.

MARGARET LUMSDIN, Relict of Robert Bell, Writer to the Signet, *against* HOME of Linthill, MARY HAY, Relict of Nisbet, ROCHEAD, and WHITSOMHILL.

No 5.
A tack of teinds was granted for life, and blank years thereafter. The blank was scored, and the Lords did not fill it up, but found the tack expired.

THE point was about the import of a tack of teinds set by a minister during his life, and for years thereafter; which the tacksman contended, ought to be expounded *in terminis juris*, and so filled up by the Lords *tanquam boni viri*, and conform to the meaning of parties; and by the acts of Parliament, a beneficed person may set tacks not only during his life, but also for five years thereafter, if with the consent of the patron, by act 5th Parl. 1617; for *quod inesse debet inesse præsumitur:* And lawyers say, *quæ sunt usus et consuetudinis veniunt in contractibus bonæ fidei, et interpretatio facienda est ut actus potius valeat quam pereat;* and though this seems to make it without a definite ish, yet this may be defined either *per se, vel relatione ad aliud*, as here parties are presumed to have had an eye to the law; and it being 'years' in the plural, that must be two at least; according to the rule in the common law, *locutio pluralis duorum numero contenta est.—Answered*, That tacks are *stricti juris*, and not to be extended beyond their precise words; and the incumbent *non fecit quod potuit*, and *blank* years is *no* years.——THE LORDS finding the blank was scored, they thought the same could not be now supplied nor filled up; and therefore found the tack expired with the death of the setter.

Reporter, *Grocerig.*

Fol. Dic. v. 1. *p.* 52. *Fount. v.* 1. *p.* 728.

1732. *February.* LADY MONKTON *against* BALDERSTON.

No 6.
Whether a landlord, who had agreed to receive such sub-tenants as he should be content with, was entitled to refuse entirely and arbitrarily?

A TACK being set to a man, his heirs, and sub-tenants, whom the setter should be content with and accept of allenarly, secluding his assignees; and the tacksman having made a sub-set without the heritor's concurrence, the question occurred, What was the import of the above clause, whether it entitled him arbitrarily to with-hold his consent; or if he was obliged to give reasons for his dissent, to be judged of *secundum arbitrium boni viri?* This debated but not ultimately determined.

Fol. Dic. v. 1. *p.* 53.

1734. *February* 19. CORSON *against* MAXWELL of Barn.

No 7.
A back-bond was granted, agreeing to mitigate a bond of provision at the sight of

A GENTLEMAN having given a bond of provision to his sister for 3000 merks, took a back bond from her, importing, 'That it being rather too great for his 'circumstances, therefore she consented that the same should be mitigated by 'friends to be chosen *hinc inde*, her mother being always one.' After the mo-

No 7.
friends, one being *fine qua non*. This perſon having died, the proviſion ſuſtained *in toto*.

ther's deceaſe, the brothers creditors inſiſting for a mitigation *secundum arbitrium boni viri*, it was *answered*, That the condition of the mitigation had failed, the mother being now dead; and therefore the bond muſt ſubſiſt *in toto*, as if this power of reſtricting had never been.——The Lords found there was no arbitriment in this caſe, and that the bond ſubſiſted *in toto*.

Fol. Dic. v. 1. *p.* 53.

No 8.
Certain perſons having been named to fix proviſions to children in a certain event, would not accept. The Court would not hold the office as devolved on them *tanquam boni viri*.

1739. *December* 22. Campbell *against* Campbells.

Colonel Campbell being bound in his contract of marriage, to ſecure the ſum of 40,000 merks, and the conqueſt during the marriage, to himſelf and ſpouſe in conjunct-fee and liferent, and to the bairns to be procreate of the marriage in fee, did, by a death-bed deed, ſettle all upon his eldeſt ſon, burdened with the ſum of 30,000 merks to his younger children, to take place in caſe their mother ſhould give up her claim to the liferent of the conqueſt, and reſtrict herſelf to a leſſer jointure, otherwiſe theſe proviſions to be void; in which event it was left upon the Duke of Argyle and Earl of Iſlay to name ſuch proviſions to the children, as they ſhould ſee convenient. The referees having declined to accept of the truſt repoſed in them, the queſtion occurred betwixt the heir and younger children, Whether their powers were devolved upon the Court of Seſſion to determine proviſions to the younger children *secundum arbitrium boni viri*; or if the younger children were to be left to the extraordinary remedy of reducing the teſtament upon the claim they had by the contract of marriage.——The Lords found, That the Duke of Argyle and Earl of Iſlay having declined to execute the powers veſted in them by Colonel Campbell, their powers are not devolved on this Court, *tanquam boni viri*.

Fol. Dic. v. 1. *p.* 53.