

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.

- No. 13. a subscribed tack in writ thereupon. After he had bruiked the land one or two years, he renounces his tack. Andrew Lawrie pursues him before the Bailies of Stirling to perfect his promise anent the subscribing of the tack, and summoned him to give his oath *de calumnia*. He is holden *pro confesso*, and the promise is proved by witnesses, and Walter decerned to perfect the tack. He intents reduction of this decret, as unjustly given by probation of witnesses, seeing no more than a year's tack could be proved by witnesses, but that the promise of more years ought to be proved *scripto vel juramento p̄artis*. The Lords ordained Walter to give his oath anent his promise.

Auchinleck MS. p. 234.

1630. February 10. SIR WILLIAM MURRAY *against* _____.

- No. 14. Sir William Murray pursues a tenant who had taken a room from him by a verbal tack, and had been in possession of the room at Whitsunday, and had removed therefrom at Lammas for a year's duty. It was controverted betwixt them concerning the conditions of the contract. The defender offered to prove by witnesses. The Lords found it should be proved either *scripto* or oath of the defender.

Auchinleck MS. p. 235.

1631. July 29. BISHOP of the ISLES *against* M'LEAN.

- No. 15. The reduction of a tack set without the consent of the Chapter, must be libelled in this manner, that the time of setting the tack there was so many of the Chapters living, whose names must be expressed in the libel, and that such and such persons being alive for the time had not subscribed the said tack: Which they found relevant in the action of reduction pursued by the Bishop of the Isles against M'Lean.

1631. November 1.—Notwithstanding, the Lords would not cast the summonses, but suffered the Bishop to mend them, and the party to answer thereto.

Auchinleck MS. p. 234.

* * Durie's report of this case is No. 17. p. 5630. *voce* HOMOLOGATION.

1636. July 16. MR. ROGER MOWAT *against* JOHNSTON.

No. 16.
Verbal Tack.

Mr. Roger Mowat, donatar to the escheat and life-rent of Alexander Keith, pursued one Johnston, to whom the said Alexander had set a verbal five years