No. 52.
ought to last for the life of the first heir, and no longer.

his father, and so it ought to defend him during his life-time; and the pursuer contending, that the rental ought not to defend him after the decease of the first receiver, albeit it bore that word of the rentaller's heir; except that he might prove by authentic probation, that the custom of the Town of Wigton is so, that rentals so set are effectual to the receiver's heirs for his life-time; and that that custom has been allowed to the heir so to bruik;—the Lords sustained the exception, and found, that the rental set to a rentaller and his heirs, ought to maintain the first heir of the rentaller during his life-time; and that there was no necessity to allege or prove any such custom as was replied on; but sustained the exception without that allegeance; and found that they would observe this decision thereafter, when the like question occurs; but albeit it was so here found, yet the exception of the tenor of rentals may furnish cause of scruple; for if any heritor should receive a person and his heirs, rentallers to the setter personally, not proporting, that they are admitted to the setter and his heirs, it may appear *eo casu*, that then the heirs of the rentallers should not bruik longer than that setter's life; for albeit the rentallers heirs be mentioned, yet that may be constructed, that they should bruik, in case the rentaller's self should die before the setter, so that these considerations, and the like, will depend much upon the tenor and conception of clauses in rentals.

Act. *Gilmor.* Alt. *Hepburn.* Clerk, *Gibson.*

Fol. Dic. v. 2. *p.* 419. *Durie, p.* 629.

*** Spottiswood reports this case:

It being questionable how long a rental given to a man and his heirs should last, the Lords having decided it sometimes this way, sometimes that; in an action between Mr. Christie and A. Hannay, they found that it should last for the life-time of the first heir of him to whom the rental was given, and no longer, conform to the civil law above-written, which they declared they would keep and follow in all time thereafter, when the like question should occur.

Spottiswood, p. 354.

*** See 15th March, 1631, Earl of Galloway, No. 25. p. 7194. *voce* IRRITANCY.

1633. *February* 6. GORDON *against* M'CULLOCH.

No. 53.

In a removing from the lands of Ardblair against Henry M'Culloch, at the instance of John Gordon of Ardwell, who had comprised the same from umquhile M'Culloch of Myrton, heritor thereof; the Lords found this right, and defence thereupon underwritten, relevant, to defend the tenant, viz. that the defender had a tack from the umquhile heritor before the comprising, which albeit it was expired before the warning, yet the same bearing this clause, "That the said setter received the defender and his heirs kindly tenants to him and his heirs in the said

lands, after the expiring of the tack;" this clause was found sufficient to defend the defender from all removing during the tenant's life-time, albeit the pursuer replied, that the clause ought not to be respected against the compriser, who was a singular successor; and that he alleged, that it could last no longer than the setter and receiver lived together, and that it should expire by any of their deceases; likeas the setter was deceased, and so it should expire, and the clause itself could not stand, neither was compatible with the tack, so long as the tack stood unexpired; and before it expired, that clause could not take beginning, the setter being dead, to whom he should have been kindly tenant admitted; and before that clause could take effect, the land being comprised, whereby it became void against this compriser, a singular successor; which reply was repelled, and the clause sustained, as said is. No. 53.

Fol. Dic. v. 2. p. 418. *Durie, p.* 669.

1675. *July* 2.

EARL of DUNDONALD *against* GLENAGIES and The EARL of MARR. No. 54.

A tack of the teinds of Kilmaranoch being set by the Abbot of Cambuskenneth to Sir James Erskine for his life-time, and for the life-time of his heir-male; and after the decease of the heir-male, for the life-time of his heir-male, and two nineteen years thereafter; the Earl of Dundonald, having right by progress to the said tack, pursued a spuilzie of the teinds.

It was alleged, That the tack is expired; and if the Earl of Dundonald will condescend and prove that the said Sir James had an heir-male surviving, the defenders will offer to prove, that two nineteen years had expired since the decease of the last heir-male.

The Lords found, That the pursuer should condescend upon an heir-male, and prove that he survived the said Sir James; and if he should condescend and prove, that the defender ought to prove (as said is) that the tack was expired; and did assign to the pursuer and defender to prove respective.

Dirleton, p. 141.

1680. *June* 25. ——— *against* FERME. No. 55.

One being charged to remove from a shop, suspends, that he had a tack bearing a provision, that he should not be removed, if he found Mr. William Kintore cautioner for the duty. Answered, The tack was null, wanting an ish. The Lords sustained the tack as being during the tacksman's pleasure, which ended with his life, and declared they would accept of no other cautioner than Mr. William, though more responsal, because tacks are *stricti juris*.

Fol. Dic. v. 2. p. 418. *Fountainhall MS.*