

1671. December 16. BLAIR *against* BROWN.

No 54.

In a removing, the tenant pleading on a current tack, the landlord replied, three years rent were due. He was allowed to amend his libel to that effect.

BLAIR pursues removing against his tenant, upon a warning, who excepts upon a tack standing. The pursuer *replies*, That there is more than three terms of the tack-duty resting, so that the defender must either remove, or find caution, and pay the by-gones. It was *answered*, That this was not competent by way of reply, but required a special action.

THE LORDS would not sustain it by way of reply; but if the pursuer would add that member to the same libel, the LORDS would sustain it without putting the pursuer to a new process.

*Fol. Dic. v. 1. p. 174. Stair, v. 2. p. 26.*

S E C T. XIII.

Want of Consent of Curators how Proponable.

1611. January 24. GILBERT MONCRIEFF *against* PATRICK CRAIG.

No 55.

A cautioner being charged upon a liquid bond, it was found competent by exception, that his subscribing as cautioner was null, being without his curator's consent.

HE who being minor, and having curators, became caution for a debt in a bond, the same being registered, and he charged, suspended upon the nullity of his bond in respect of his minority, and want of his curator's consent; the same will be found relevant; and because his minority cannot be proven instantly, and therefore he will get a term for probation of the reasons of his suspension.

*Fol. Dic. v. 1. p. 175. Haddington, No 2114.*

1621. December 7. CLERK *against* L. BALGONY.

No 56.

A minor was not allowed to propone, by way of exception, that he having curators had entered to his predecessors without their consent.

THE L. Balgony being pursued at the instance of one Clerk as heir to his father; and, for instructing of him to be heir, there was an service produced, against the which it was *alleged* for the Laird of Balgony, by Mr Andrew Ayton his procurator, That the same was null, being a service purchased by the defender, who was at that time minor, and as yet, and then having curators, without whose consent the service was deduced; and therefore it could not verify him to be heir.—THE LORDS repelled the allegiance, albeit it was offered instantly to be proven, in respect of the service standing, but prejudice to reduce the same, *prout de jure*.

*Act. Baird.*

*Alt. Ayton.*

*Fol. Dic. v. 1. p. 174. Durie, p. 5.*