and having transacted with the lady tercer, may remove the tenants from the hail, albeit the lady tercer might not have removed them from the third. No 14.

Fol. Dic. v. 1. p. 378. Haddington, MS. No 43.

1613. *June* 8. MR ALEXANDER POWRIE *against* JOHNSTON.

No 15.
Subscribing as witness to a tack was found only to be reputed a testimony of the truth of the subscription, but not to hinder the witness to impugn the tack he signed.

MR ALEXANDER POWRIE, as parson of Dalton, pursued Johnston for spuilzie, or wrongous intromission of his teinds. The defender *excepted*, That he had tacks set to him of the teinds controverted, by the Bishop of Glasgow, for terms to run. It was *replied*, That the tack set by the Bishop was null, because he was not titular of that benefice of Dalton, but only patron, and so had no power to set tacks. It was *duplied*, That this pursuer could not impugn the tack, because he had in effect ratified it, he being inserted witness in it, and having subscribed it. To this was *answered*, That his subscription as witness was only a testimony of the truth of the tack, and could not infer his consent to the tenor thereof. Which answer the LORDS found relevant; and, in respect thereof, repelled the allegeance.

Fol. Dic. v. 1. p. 378. Haddington, MS. No 2539.

No 16.
In a competition between two persons for the property of a coal, one of them, who had obtained decree of removing against the tacksman, subscribed as witness to a tack let to the same tacksman by the other competitor. Found that this did not prejudge the subscriber in his right.

This sentence was adhered to, though the tack contained a clause in favour of the subscriber.

1625. *July* 19. WALWOOD *against* TAYLOR and the E. of DUNFERMLINE.

IN a suspension, Walwood, in Dunfermline, against Taylor and the Earl of Dunfermline, suspending a decreet obtained by Walwood against the said Taylor, for removing from a coal; in the which suspension, the right of the coal being disputed betwixt Walwood and the Earl of Dunfermline, the LORDS found, that albeit Walwood was witness to a tack of that coal, set by the E. of Dunfermline to Taylor, against whom Walwood had obtained a decreet of removing from the said coal, yet his being witness to that tack did not prejudge him of his right to the coal, nor yet of his decreet obtained after that tack against Taylor; but that, notwithstanding of his subscribing as witness to the tack set by the Earl of Dunfermline to Taylor, he might thereafter seek, and pursue, and obtain decreet of removing against Taylor, upon his right to the coal, and that he needed never to have warned the Earl of Dunfermline, setter of the tack, nor his heirs, in that process of removing, because Taylor was tenant of that coal to him divers years before that tack, set by the Earl of Dunfermline. Nam quando aliquis subscribit tanquam testis, non videtur se obligare, l. Titia, § Lucius, Dl de legat. 2*do*, Ratio videtur quia subscribere possum ut testis, licet non vidi quæ subscripsi, quo casu non obligor, Socin. Reg. 477.

No 16.

1625. *July* 28.—IN an action betwixt Walwood and the Earl of Dunfermline, a tack set by the Earl of Dunfermline of a coal, to one called Taylor, which tack was subscribed by Walwood as witness; it being controverted, and *alleged*, That Walwood, who pretended right to the said coal, set by the foresaid written tack, by the Earl of Dunfermline, as said is, could not come against any thing contained in that tack, so subscribed by him, as witness, specially also, seeing in that tack there was a clause contained in his favours.—THE LORDS found, that the said Walwood's subscribing that tack as witness, was not of that force to prejudge him of any right he had to that coal, which was set in tack, as said is, notwithstanding of any clause therein contained; and that his subscription, as witness thereto, was not obligatory against him, neither induced any consent of his to that tack.

Act. *Stuart.* Alt. *Hope et Belshes.* Clerk, *Hay.*
Fol. Dic. v. 1. *p.* 378. *Durie, p.* 179, *&* 183.

1631. *July* 26. BISHOP of the Isles *against* SCHAW and Others.

No 17.
A member of a chapter having subscribed a tack let by the bishop, not as consenter, but as witness; this was found equivalent to his consent.

IN a reduction of a tack of the teind-fishes of the Isles, set to the defenders by umquhile Thomas Bishop of the Isles, upon these two reasons, viz. *First*, because the Bishop, setter of the tack, had no power to set the same, in so far as the Bishop of the Isles, immediate predecessor to the Bishop, setter of the tack controverted, had set another tack of the same teind-fishes to other persons, which tack was not yet expired the time of the setting of the tack libelled, neither is yet expired, and so the tack is set *a non habente potestatem*, and ought therefore to be reduced; it being *alleged*, That this reason was not relevant at this Bishop's instance, and that he had no interest upon this reason to reduce the tack libelled, seeing the same was clothed, and is yet clothed with present and continual possession, since the setting thereof; and that the prior alleged tacksman to the other Bishop, who only might have interest to quarrel the defender's tack upon that reason, compeared not to quarrel the same;—THE LORDS found nevertheless that this Bishop had interest upon this reason to quarrel the tack, and found this reason relevant, and sustained his interest; and so it was found by this decision, that the succeeding Bishop could not set a tack of any thing, whereof his predecessor had set a tack of before, which was standing then unexpired; and that the successor, albeit the party quarrelled not the same, had interest to reduce upon such reasons. The *second* reason of reduction, was diminution of the rental, because by the said prior tack, the Bishop had set the same for payment of a merk for ilk last of teind-fishes that should be taken; and this tack bore only the duty of 100 merks for all. This was found no diminution, seeing there was no constant rental libelled, ever to have been of these teind-fishes, which had taken effect; for this uncertainty