

1650. *January 8.* PATONE *against* LISKE.

[*See page 452.*]

IN the foresaid action betwixt Patone and Liske, where they were ordained to condescend on their possession,—the possession alleged by Liske immediately after his father's decease, by obtaining decreet against the tenants, and setting of tacks to them by the space of six or seven years, was not respected: because Patone offered him to prove, that the father paid him his annualrent, of the knowledge of the said Mr Alexander his son, who knew of the infestment, and was *in mala fide* not to have called him to the obtaining of these decreets; especially seeing the said Mr Alexander his infestment is null by the 105th Act of King James V his Parliament, in the year 1540, whereby it is expressly ordained, That, whosoever puts their bairns, friends, or other persons, in private state of their lands, and thereafter disposes their lands to another, *ex titulo oneroso*, who gets peaceable possession year and day,—the foresaid person, privately seased, cannot be heard to oppose the true creditor foresaid; which is in this case.

*Page 141.*

1650. *January 8.* The LAIRD OF GENKINDIE *against* FRANCIS HAY.

IN the action pursued by the Laird Genkindie against Francis Hay, for the duty of some lands alleged set by him to the said Francis, it was excepted, That there was no tack produced to instruct his interest: Who replied, That the tack was in the defender's hand, and was a mutual evident, suppose there was not a double thereof; likeas the duties might be craved of him, as he who entered in possession, and set part of the lands to some sub-tenants: as also, that the tack itself was procured by some of the defender's friends of the name of Hay, inserted witnesses therein, whereof one is dead and another yet on life; likeas the same tack was produced before the committee at Aberdeen, to make him free of the proclamation whereby Haddoe's tenants were ordained to return to their own possessions; and the defender, after that, taking more lands from Haddoe's friends, took them obliged to free him of the foresaid tack. Yet the Lords would not give answer; because it seemed to be a making up of a new tack, which ought to have been by a summons for proving of the tenour: but, before any answer making, they thought good to examine, *ex officio*, the witness inserted who lives, together with the Laird of Eacht and Mr James Baird.

*Page 142.*

1650. *January 8.* JOHN WALDO *against* WILLIAM ARNOTE.

IN the action, John Waldo against William Arnote, wherein Waldo suits the executor of George Arnote for payment, not only of sixty score pounds sterling, contained in a bond obliging to pay, but also of other sixty, related in the nar-

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