

nuity. And as to the interruption, Mr Livingstone *answered*, That any interruption at Hairhope's instance was during the currency of the tack, before the prescription begun to run; and Mr Livingstone being reponed against his decret, the matter landed in a competition not wakened within five years.

No 250.

THE LORDS sustained the pursuer's title; but found that the act of Parliament 1669 did take place in this case.

Act. H. Dalrymple, sen.

Alt. Ja. Boswell.

Clerk, Hall.

Edgar, p. 162.

1729. July 10.

NISBET *against* BAIKIE.

No 251.

THE quinquennial prescription of mails and duties takes place equally whether the tenant has possessed by written or verbal tack.

Partial payments, made within the five years, found no interruption of prescription, as tending rather to fortify the presumption, that all bygones are cleared.

A tack of mails and duties falls not under the act, which regards only tenants who are in the natural possession, by labouring the ground.—See APPENDIX.

Fol. Dic. v. 2. p. 117.

1739. June 19.

STRAHORN *against* CUNNINGHAM.

No 252.

THE five years prescription of mails and duties, after the tenant's removal, does not take place against an heritor, though he have sold his lands, and that the purchaser has been five years in possession; the tenant still remaining in the ground.

Kilkerran, (PRESCRIPTION.) No 2. p. 415.

1771. March 7.

LAUHLAN DUFF *against* WILLIAM INNES of SANDSIDE.

No 253.
Quinquennial
prescription
of the act
1669, c. 9.
pleadable by
the cautioner
of the tenant.

LAUHLAN DUFF, factor for Lord and Lady Fife, as executor of the Earl of Caithness, pursued Innes of Sandside for payment of a certain sum of money, in consequence of two obligatory missives, granted by Sandside's father. Sandside, in defence, *pleaded*, That these missives being cautionry obligations for mails and duties, owing by tenants removed from the land, and the debt against