1696. July 15.

MARGARET LUMSDIN, Relict of Robert Bell, Writer to the Signet, against Home of Linthill, Mary Hay, Relict of Nilbet, Rochead, and Whitsomhill.

The point was about the import of a tack of teinds fet by a minister during years thereafter; which the tacksman contended, ought his life, and for to be expounded in terminis juris, and so filled up by the Lords tanquam boni viri, and conform to the meaning of parties; and by the acts of Parliament, a beneficed person may set tacks not only during his life, but also for five years thereafter, if with the consent of the patron, by act 5th Parl. 1617; for quod inesse debet inesse præsumitur: And lawyers say, quæ sunt usus et consuetudinis veniunt in contractibus bone fidei, et interpretatio facienda est ut actus potius valeat quam pereat; and though this feems to make it without a definite ish, yet this may be defined either per se, vel relatione ad aliud, as here parties are prefumed to have had an eye to the law; and it being 'years' in the plural, that must be two at least; according to the rule in the common law, locutio pluralis duorum numero contenta est.—Answered, That tacks are strifti juris, and not to be extended beyond their precise words; and the incumbent non fecit quod potuit, and blank years is no years.—The Lords finding the blank was foored, they thought the fame could not be now supplied nor filled up; and therefore found the tack expired with the death of the fetter.

Reporter, Grocerig.

Fol. Dic. v. 1. p. 52. Fount. v. 1. p. 728,

1732. February. LADY MONKTON against BALDERSTON.

A TACK being fet to a man, his heirs, and fub-tenants, whom the fetter should be content with and accept of allenarly, secluding his assignees; and the tacks-man having made a sub-set without the heritor's concurrence, the question occurred, What was the import of the above clause, whether it entitled him arbitrarily to with-hold his consent; or if he was obliged to give reasons for his dissent, to be judged of secundum arbitrium boni viri? This debated but not ultimately determined.

Fol. Dic. v. 1. p. 53.

No 6.
Whether a landlord, who had agreed to receive fuch fub-tenants as he should be content with, was entitled to re-

fuse entirely

and arbitrari-

1734. February 19. Corson against Maxwell of Barn.

A GENTLEMAN having given a bond of provision to his fifter for 3000 merks, took a back bond from her, importing, 'That it being rather too great for his 'circumstances, therefore she consented that the same should be mitigated by 'friends to be chosen binc inde, her mother being always one.' After the mo-Vol. II.

No 7.
A back-bond was granted, agreeing to mitigate a bond of provision at the fight of

A tack of teinds was granted for life, and blank years thereafter. The blank was fcored, and the Lords did not fill it up, but found the tack expired.

No 5.