

No 8.

readiest mails and duty by his said tenant to his master, and that yearly so long as the principal sum was unpaid. The bond was found by the LORDS heritable, and not to pertain to the executor but to the heir.

*Auchinleck, MS. p. 146.*

No 9.

A person in the contract of marriage of his natural daughter, stipulated to her a liferent right in lands, and took a back-bond from her. She never had obtained possession; but her right was preferred in competition with a party in possession.

1632. July 17.

L. AUCHINLECK *against* CATHCART.

THE deceased Lord Cathcart, in his bastard daughter's contract of marriage, is obliged to infeft her and her husband, during their lifetime, and their heirs, in some lands, whereof the daughter sets presently a back-tack to the Lord Cathcart, for payment of a silver duty, of which silver duty there were twenty years paid by the father, but never got any payment from the tenants, nor out of the said lands. The said daughter pursuing upon the infeftment granted to her, following upon the said contract, which was a base infeftment holding of the granter, the tenants of the lands, for payment of the mails and duties, and they alleging them to be tenants to the L. Auchinleck, who was infeft in the same lands by the Lord Cathcart, holding of him sicklike, and confirmed by the King, and by virtue thereof six years in possession of the very duties of the lands from the tenants, occupiers thereof; likeas, since the decease of the Lord Cathcart, his author, he charged his son to enter to the superiority of these lands, and for not doing has obtained decret of tinsel of superiority, whereupon he is infeft by the King, and in possession both real, by uplifting from the tenants the duties, and also civil, by obtaining sentences against them; likeas the tenants these thirty years bypast ever since paid their duties to the Lord Cathcart, while the L. Auchinleck acquired his right and possession, the pursuer's infeftment being ever obscure and unknown, nor ever clothed with possession;—the LORDS repelled the allegiance, albeit it was also proponed for Auchinleck compearing with the tenants, in respect of the pursuer's right, which was anterior to the defender's, and that the same depended upon a contract of marriage, and that they got payment of the back-tack duty from the Lord Cathcart, albeit they never had any other possession, either from the tenants, or out of the lands, and albeit these ten years bypast, they had got no payment, and preferred her to the excipient, albeit real possessor.

Clerk, *Scot.*

*Durie, p. 647.*

No 10.

1634. January 10.

MARKLAND *against* THOMSON.

MARKLAND, relict of Thomson, pursues Thomson, son and executor to her husband, for her third part of a bond of L. 1000, made by Summer, to content