

1684. *March.* BISHOP OF GALLOWAY *against* INNES of Coxtoun.

No. 56.

The Bishop of Galloway having set a tack of tithes to Mr. John Innes of Coxtoun, during his life, and after his decease during the life of James his eldest son, and for the space of two nineteen years after James's decease; James and his father being both dead, and two nineteen years run since the death of the son, who died first, the Bishop contended that the tack was expired.

Answered: The tack being set for two life-rents, the naming of the son is not to be understood personally, but *designative*; for otherwise the tack would be but for one life-rent.

The Lords found the nineteen years to commence from the death of the father, who survived his son James. But the interlocutor was stopped before pronouncing, till the tack was re-considered.

*Harcarse, No. 952. p. 268.*

1688. *July 20.* JAMES OSWALD *against* ANDREW ROBB.

No. 57.

A tack set to one during his life, and to his heir during his life, containing an obligation upon the setter and his successors to grant tacks in all time coming, for the same duty to the tacksman's heirs as kindly tenants, being quarrelled in a reduction as null for want of an ish;

Answered: An obligation to set a tack is, in Craig's opinion, equivalent to a tack; *2d*, The ish is certain, at least is made at a definite uncertain time, viz. the failure of heirs of the tacksman; *3d*, The defender hath acquired a title of prescription by forty years possession, as heir to the first heir in the tack, which hath been found sufficient to validate null tacks, set without issue, and consent of the Patron or Chapter.

Replied: Tacks subscribed without an ish are null; and though tacks null for want of solemnities, as the Patron's or Chapter's consent, &c. may be fortified by prescription, yet tacks null for (defect of) essentials, as the tack-duty or issue, cannot be made effectual by prescription.

The Lords reduced the tack as null for want of an ish.

*Harcarse, No. 958. p. 270.*

1713. *December 17.*

EARL of NITHSDALE *against* ROBERT BROWN of Bishoptoun and His LADY.

No. 58.

Found in conformity to Ahannay *against* Aiton, No. 52. p. 15191.

The Earl of Nithsdale having pursued a removing *against* Bishoptoun and his Lady, from certain lands set in rental by the pursuer's predecessor to Homer Maxwell and his heirs indefinitely, upon this ground, that such rental doth last