

No 19.

In a removing, at the instance of an heir of a donatar to a ward, against a tenant, this exception, that the tenant had a tack from the defunct, which was to stand during the said granter's pleasure, was not interpreted to stand during the ward, but that *voluntas morte extinguitur*.

1583. *January.*

HEIRESS and REPRESENTATIVES of EARL of MURRAY *against* TUTORS of SANQUHAR.

THE tutor of Sanquhar, Crichton, being warned to flit and remove frae the lands and mains of Sanquhar, be the heritrix of Murray, as donatar to the ward thereof, it was *alleged* be him, That he had tacks for terms to run, of umquhile Annabal Stewart, daughter to the Earl of Murray, Regent, donatrix at that time, with consent of her father, the said Earl, as lawful administrator to her, and that during the will of the said Annabal and the said Earl, *nam ita cavebat assedatio*, during our will the time of the ward.—It was *alleged* be the heritrix of Murray, That the tack produced proved not the allegiance, *nam status quæstionis fuit in termino probatorio*; because the tack and assedation being set during the will of the setters thereof, being deceased, the will was expired, *et voluntas morte extincta esset, prout in l. qui ad ff. locati*.—It was *answered* on the other part, *quod non stricte voluntates decedentium interpretandæ*; and that thir words, during the time of the ward, *fuit modus adjectus*, and behoved to stand so long as the ward stands.—THE LORDS, *una voce dicentes*, fand the exception not proven; and that the will was expired be the decease of the person, *et morte expiaretur*.

*Fol. Dic. v. 1. p. 146. Colvil, MS. p. 252.*

1632. *July 10.*

BOWMAKER *against* HOME.

No 20.

BONDS made by the donatars to the treasurer, that they being satisfied of their just debt, and their expenses debursed on the gift, shall be relieved anent the rest by the treasurer his sight and declaration, is understood to be the treasurer that shall be in office when any exception shall be founded upon the said bond, and not upon the declaration of him who was treasurer when the bond was granted.

*Fol. Dic. v. 1. p. 146. Auchinleck, MS. p. 17.*

1713. *July 9.*

THE DUKE of MONTROSE *against* ARCHIBALD M'AULAY of Ardincaple.

No 21.

Erection of lands into an earldom, with as ample powers as were competent to any other Earl in Scotland,

THE Duke of Montrose standing infest in the dukedom and regality of Lennox, pursued a reduction, improbation, and declarator against his vassals, and particularly against Ardincaple, who claimed an heritable right to the office of bailiary of the regality of Lennox. The defender, for vouching his right to that office of bailiary, produced certain heritable rights of the bailiary of the earldom,