1590. NEWTON *against* The TUTOR of LANGTON.

THE tutor of Langton being pursued by one Newton for the spuilyie of certain goods, corns, and cattle; Alleged, That the pursuer having committed a slaughter, the defender, being sheriff of Berwick during the minority of Langton, intromitted with the said goods and gear by virtue of his office, and offered that which was extant again. Answered, That the Act of Parliament gave no power to sheriffs to intromit, but only to arrest, especially the party not being convicted. In respect of which reply the exception was repelled.

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1591. DAVID WOOD of CRAIGE *against* DAVID MONCUR.

ROGER Wood of Craige, liferenter, contracted with his son David, fiar, to excamb the lands of C. with the lands of D. during their lifetime; in the which contract it was provided, that the tenants and possessors of the lands should not be removed, but should continue in their possessions as long as their tack lasted which they had to run. After both their deceases, David, the fiar's son, warned one David Moncur, tacksman of the lands of C. to flit and remove. Excepted, That he ought not, because he had tacks for terms to run, set to him by the pursuer's father, to whom he was heir, and so behoved to warrant the same. Replied, That any tack he had was by virtue of the excambion, and the excambion being made but for the lifetimes of the two contractors, it could not be extended to a third person, not being a contractor, nor any mention being made of him in the said contract. Duplied, That, albeit the defender was not contractor, yet there was a provision made in the same in his favours, that his tack should be kept to him, which provision the complainer should keep to him, he being heir to his father. The Lords found that the provision ought to be extended to the third person, being tacksman.

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1591. COLONEL STUART *against* The TENANTS of HOUSTON.

COLONEL Stuart, cessioner and assignee constituted by John Steil to his liferent of the lands of Houston, warned certain tenants to flit and remove. Excepted, That they had tacks for terms to run, from them who had right to set them, *viz.* Mr John Sharp, who was heritable proprietor of the said lands, and who had been in possession of them, he and his authors, for the space of thirty-eight years. Replied, That any infeftment Mr John or his authors had, the same proceeded from Matthew Hamilton of Milburn, unto whom the cedent John Steil disponed these lands, with reservation of his own liferent; and so Mr John or his authors could be in no better case than he to whom the first alienation was made. Duplied, That, according to the common law and daily practice, the defenders and their authors, being so long in possession by virtue of