

1612. *June 27.*MR. ROBERT BOYD and MR. JOHN RUSSELL, *against* LORD of TORPICHEN.

## No. 8.

Eviction  
happening  
by neglect  
of the pur-  
chaser.

He to whom a tack of teinds is set for 19 years, his entry to be at the date of the tack, if he apprehended not possession of the teinds, but suffer a party having right to the said teinds to lead, and intromit with the said teinds, and duties for many years, neither making defence for the teinds of the lands possessed by himself, nor challenge of the rest of the teinds, his heir will not get warrandice against the setter for the years of the tacksman's life, who during that space was not debarred by law, but by his own negligence that made claim to the teinds; neither will he get the setter's heir decerned to give him as many years tacks as he alleges that his predecessor wanted, being debarred by anterior right, if he never brought the matter in question neither by pursuit nor defence; but he will get action for the years that the setter or his heirs uplifted the teinds which was set to his predecessor.

The Lords will not suffer a pursuer to pass from his action after divers peremptories proponed, and exception of improbation proponed against his title.

In that same action, Mr. John Russel having used injurious language to Mr. Thomas Hope in presence of the hail Lords, he was ordained to crave his pardon both in the Inner House and Outer House, and if he ever committed the like, he should be *simpliciter* deprived.

*Haddington MS. No. 2472.*

\* \* Hope of Kerse reports this case :

In an action of warrandice pursued by Marion Carmichael, the relict of James Boyd of ———, and his heir, against my Lord Torpichen, as heir to his good-sir or brother for the warrandice of a tack of the teinds of Goremyre, Craigend, and Woodside, in respect the said teinds were broken by the Lady Torpichen, by virtue of her infestment *cum decimis inclusis* granted to her *in anno 1565*, before the date of the said tack, and to that effect to give them as many years tacks in time coming as they wanted;—the Lords assoilzied from the whole years bygone, in respect James Boyd of Kippis did no diligence to obtain possession upon his tack, nor used no inhibition, nor was not debarred by a lawful sentence recovered against him by the Lady; and yet the Lords ordained my Lord Torpichen to give as many years tacks as were to run of Kippis' tacks the time of the Lady's decease, which was in November 1596.

*Kerse MS. f. 200.*