

only during the joint lives of the getter and receiver; L. AITON against Tenants, No. 24. p. 7191. *voce* IRRITANCY;

Answered for the defenders: Though a rental to a man and his heirs is not extended to heirs irredeemably so as to want an ish; yet it is by custom extended to the first heir; Earl of Galloway against Burgesses of Wigtoun, No. 25. p. 7193. *voce* IRRITANCY; Ahanny against Aiton, No. 52. p. 15191. and the Lady Bishoptoun is Homer Maxwell's immediate heir. As to the decision betwixt L. Aiton and Tenants, it seems hard, and hath never been followed.

The Lords found that the first heir hath the benefit of this rental, and that it terminates with the first heir's life.

Fol. Dic. v. 2. p. 419. Forbes MS. p. 13.

1717. *January 23.* CARRUTHERS *against* IRVINE.

Carruthers of Holmains, in the year 1680, granted a tack to William Irvine of the following tenor: "Sets, and in rental lets to the said William the foresaid five pound land, as then possessed by him and his tenants, and that perpetually and continually as long as the grass groweth up and the water runneth down, and obliges him and his heirs, &c. to renew the present security and right of the said five pound land to the said William Irvine, his heirs and successors, ay and while they find themselves sufficiently secured in the said lands." In a removing at the instance of the heir of the granter, it was objected, That this tack or rental was null, as wanting an ish. Answered, A tack or rental wanting an ish is indeed not good against singular successors; at the same time it can hardly be doubted but a proprietor has it in his power to grant such an obligation to his tenant, that shall be good against himself and heirs for ever. This is no unlawful obligation, none of those that are reprobated in law. The Lords found, That by the meaning of parties the contract was intended to be a perpetual right to the tenant and his successors; and therefore assoilzied.

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Fol. Dic. v. 2. p. 419.

* * See 26th July, 1631, Crichton against Viscount of Ayr, No. 362. p. 11182. *voce* PRESCRIPTION.

1726. *November 24.*

KINDLY TENANTS of LOCHMABEN *against* VISCOUNT of STORMONT.

In a declarator of the Crown's kindly tenants of Lochmaben against Viscount of Stormont, the Lords found, from some ancient documents produced, That the pursuers, though having neither charter nor sasine, but as tenants paying their rents to the Viscount of Stormont, had yet such a right of property in the lands

No. 60.