

1669. *June 17.* JAMES RIDDELL *against* The LAIRD of GRAINGE HAMILTON.

IN a declarator, pursued at James Riddell's instance, against Grange, for doing wrong in stopping the level of his coal, to which he had right by contract made by Grange's father,—there being a commission granted for examining witnesses upon the place,—after report made, it was debated amongst the Lords, If tenants, who had tacks standing for years to run, might be admitted witnesses for their masters.

It being ALLEGED by some, That no tenants, but such as had liferent tacks, or nineteen years' at least, could be admitted; and by others, that no tenants could be rejected but such as were removeable at pleasure, their tacks being expired. But there being witnesses before, who did sufficiently prove, that question was not decided; yet there is strong and probable arguments for both opinions; the old practicks running for the first, and the custom of late, both in Council and Session, not being so strict: And in reason, tenants against whom no other objection can be made, having tacks standing, and not in their masters' reverence for bygones, and it being supposed that their tacks are set for a just duty; there is no ground to make them be suspected, and rejected upon that only reason, that, after expiring of their tacks, their master may remove them; which will as well militate against a nineteen years' tack, if the most part of them be run the time of the deponing. But it is hard to determine a general rule; and, according to circumstances, it should be left to the arbitrament of the Judges to admit or reject them.

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1669. *June 17.* The HEIR-OF-LINE of TOWIE BARCLAY *against* BARCLAY of AUCHREDY, who had Right from the Heir-Male.

IN an improbation of the disposition of the barony of Towie, made to Auchredy from the next heir-male,—Auchredy himself being next to him in succession, the last term in the improbation being running,—a bill was given in for the heir-of-line, craving one of the two witnesses inserted in the disposition to be examined, that his deposition might lie *in retentis*.

It was alleged, That the desire could not be granted; because the witnesses were neither aged nor infirm, and that he could not depone till the disposition itself was produced, that he might see his own hand-write.

Notwithstanding whereof, the desire of the bill was granted; which was very hard, the whole terms for satisfying the production being so near run out; but the case was so odious.

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1669. *June 17.* MOOR of OTTERBURN *against* BENNET of GRUBBET.

THERE being mutual declarators betwixt the said two persons, anent the