he was in possession by virtue of the sub-tack, which was enough to maintain the same, being so clad with real possession of the lands, and which was as sufficient as an intimation; so that, after the said sub-tack, the tacksman could do no deed to the pursuer which could derogate to that right acquired lawfully before. The Lords sustained the renunciation foresaid, albeit done after the sub-tack, notwith-standing of the alleged possession, because the sub-tacksman was in possession of the lands divers years before he acquired the said sub-tack; so that the continuation of that possession, which he had before, could not be ascribed to the sub-tack to be any impediment to hinder the pursuer to receive the said renunciation, and to make it unprofitable to him, except the right of the sub-tack had been formally and specifically intimated to him, as said is.

Act. Hope.

Alt. Stuart & Cunningham.

Clerk, Hay.

Fol. Dic. v. 2 p. 421. Durie, p. 177. & 182.

1627. June 23.

M'MILLAN against GORDON.

No. 96.

No. 95.

A spuilzie of teinds being pursued by the sub-tacksman's assignee, this exception was proposed for the defender, viz. That he had a sub-tack from the same tacksman, which, though posterior in date, yet was clothed with continual possession ever since the principal tacksman ceased to possess, whereas the pursuer never was in possession. The exception was sustained.

Fol. Dic. v. 2. p. 420. Durie.

* This case is No. 81. p. 7018. voce Inhibition.

1627. July.

BLAIR against -

No. 97.

Found a tack valid after a comprising, whereof the entry was _____ after the comprising and sasine, in respect of the tacksman's diligence before the comprising; and thereafter repelled, in respect of the reply of retention in the person of the lessor.

Kerse MS. p. 104.

1627. July 11. WALLACE against HARVEY.

No. 98.

A tack was preferred to a comprising, in respect it was set before the denunciation, and clad with possession before sasine on the comprising; but, thereafter, it having been made appear to the Lords, that the compriser's sasine was prior to the possession attained by the tacksman, they preferred the compriser, although, be-

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No. 98. fore the sasine, the tacksman had executed summons of mails and duties against the tenants of the lands, upon which he afterwards recovered decreet.

Fol. Dic. v. 2. p. 421. Durie.

* * This case is No. 8. p. 67. voce ADJUDICATION.

See also 25th March, 1628, Blackburn against Gibson, No. 65. p. 9211. voce MUTUAL CONTRACT.

1630. July 20. John Ross against Town of Perth.

No. 99.

A compriser of a tack of teinds having apprehended the first possession, is preferred to him who had a sub-tack that was not clad with possession, although the sub-tack was prior to the comprising.

Fol. Dic. v. 2. p. 420. Auchinleck MS. p. 37.

1632. November 22. Hamilton of Sheills against His Tenants.

No. 100. Without natural possession, a tack is but personal, and not effectual against singular successors.

In a removing pursued by Hamilton of Sheills, the defender alleging, that, by contract passed with the L. Dunrod, who was author of the pursuer's right, and who had disponed the lands to the pursuer heritably, which contract was before the making of this pursuer's right, the said L. Dunrod had obliged him to infeft this defender's author in an annual-rent out of the lands, redeemable under reversion of the sums therein contained; by the which contract he gave also power to the excipient's author to set tacks of the lands libelled, to whom he pleased, and for the space contained in the contract; according whereto he had set tacks to the excipient, which were not yet expired;—this exception was repelled against the pursuer, who was singular successor to Dunrod; seeing the wadset whereupon the defender excepted was constituted only by contract, whereupon no real infeftment or security was expede; so that albeit it might work against the contractor and his heirs, yet it could not be received against the singular successor; and as to the power to set tacks contained in the contract, that was not respected against the singular successor, seeing, according thereto, no tack was set before the pursuer acquired his right; and the tack set since could not be valid against the pursuer, in respect of his intervening heritable right, acquired before the setting of the tack; for that power in the contract to set tacks was but a procuratory and mandate, which was tacit, and in effect revoked rebus integris by the constituent, before the using of the power thereof by virtue of the said heritable right acquired by the pursuer. And it being further alleged, that, by the same contract, the L. Dunrod per verba de præsenti, set a nineteen years tack to the excipient's author, which is yet unexpired, to begin after the said annual-rent was reedeemed; likeas now he