SECT. XI.

Whether Poſſeſſion of a Part validates as to the Whole.

No 59.
In a competition betwixt a prior baſe infeftment, and a poſterior public one; the latter having never attained poſſeſſion, but the former having poſſeſſed the greater part of the lands; this was found ſufficient to defend, againſt the public infeftment, for the lands of which the defender was never in poſſeſſion; the infeftment being indiviſible.

1630. *January* 14. HUNTER *againſt* His TENANTS.

IN this action, mentioned 16th December 1629,* the purſuer's infeftment being public, the defender alleging a baſe infeftment of lands, whereof the lands libelled were acknowleged to be a part by both parties; which baſe right was anterior to the purſuer's public right, and by virtue whereof he was in poſſeſſion many years of a part of the lands contained in his infeftment, (for the infeftment was of a quarter of the lands of Cadiſlie,) and the reſt which he poſſeſſed not, viz. the lands libelled, he *alleged* pertained to him by that ſame right of his prior infeftment; and the tenants poſſeſſors, now defenders, ought not to be decerned to remove at this purſuer's inſtance, ſeeing he allowed that poſſeſſion.—And the purſuer *replying*, That albeit the defenders baſe right was anterior to him, and clad with poſſeſſion of a part of the lands, yet the ſame ought not to defend againſt his public infeftment for theſe lands now libelled, whereof he was never in poſſeſſion.——THE LORDS found, That the baſe right being prior, and clad with poſſeſſion of a part of the lands therein contained, the poſſeſſion being of more than the half of the lands, was ſufficient to defend againſt the purſuer's public right, for theſe lands libelled, whereof the defender was never in poſſeſſion, as well for the lands whereof he was in poſſeſſion; and ſuſtained the ſame to aſſoilzie the defenders; albeit they had never been the defenders tenants; nor never had acknowledged him before the warning; nor never had paid him any duty; ſeeing he now allowed their poſſeſſion; and found, that poſſeſſion of the moſt part of the land contained in his infeftment, was ſufficient to ſuſtain the ſame for the whole therein contained, the ſame being allenarly of one quarter of the land, and not of diverſe tenements; and found, that the ſame was enough to ſuſtain the infeftment, which was not diviſible.

Act. *Baird.* Alt. *Belshes & Hart.* Clerk, *Hay.*

Fol. Dic. v. 1. *p.* 91. *Durie, p.* 480.

No 60.
A [illegible] infeft his ſecond ſon in an annualrent out of his lands, correſponding to an accumulated principal ſum; the

1668. *February* 5. ROBERT KER *againſt* HENRY KER.

ROBERT KER of Graden having infeft his ſecond ſon Robert Ker in an annualrent out of his lands of Graden and others, upon a contract betwixt them, whereby Graden for the ſum of 6000 merks addebted by him to his ſon, viz. 3000 merks of borrowed money, and 3000 merks for his portion, (accumulatory, and extending together as ſaid is,) was obliged to infeft the ſaid Robert in 360

* Durie, p. 474. *voce* OBLIGATION.