

*Alleged*, Whatever teinds constituted by infeftment may plead, yet tacks can never be the foundation to afford the benefit of a possessory judgment, that being only a location, and a servitude on other men's lands; and Stair seems to be of this opinion, book 4. tit. 17. *Answered*, The same reason and analogy of law that gives this privilege to infeftments, takes place in tacks, which by act 17th Parl. 1449, are declared real rights; and it is as fit to punish the heritor's negligence in the one case as the other, and to call the authors in a reduction ere my right be taken away; and the current of decisions run so; 1st December 1676, Home *contra* Scot, No 37. p. 10641.; 13th July 1636, the Bishop of Edinburgh *contra* Brown, No 34. p. 10640.; and 23d January 1678, the Duke of Lauderdale against the Earl of Tweeddale, No 31. p. 6427, where tacks of teinds clad with seven years possession, were found a habile subject of a possessory judgment. The Lords were generally clear, that a tack of teinds could afford a possessory judgment as well as an infeftment, it being a real right, complete *in suo genere*; but superseded to decide it, in regard two practicks were alleged to have found the contrary lately, viz. betwixt Sir William Bruce and the Laird of Arnot, (*voce* TEINDS), and the Earl of Galloway and Macguffock of Rusko; *IBIDEM*; and though it was answered that was only in the case betwixt the titular and the heritor, yet the LORDS, before answer, ordained them to be produced, that they might be as uniform in their decisions as possible; but otherwise, there seemed to be no great difficulty in the question.

*Fol. Dic. v. 2. p. 90. Fountainhall, v. 2. p. 340.*

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S E C T. VI.

Against what Rights does it take place?—Runs not *contra non valentes agere*.—If competent against an Action of Warrandice?—Runs against Minors.

1662. June 26.

ADAMSONS *against* LORD BALMERINO.

A POSSESSORY judgment not admitted against an annualrent right, which is *debitum fundi*.

*Fol. Dic. v. 1. p. 91. Stair.*

\*\* This case is No 3. p. 3346. *voce* DEBTOR & CREDITOR.