

delinquency; and therefore, the superior has only the benefit of the vassal's liferent, as it is the time of the denunciation; and any right constitute before, whether infeftment or tack, is not excluded: And though subaltern infeftments, being base, if they be not clad with possession before denunciation, exclude not the superior, because possession is requisite to accomplish their right; yet, such as are perfected by infeftment before the rebellion are not prejudged thereby.

THE LORDS sustained the base infeftment, and found the rebellion of the superior not to exclude base infeftments, or tacks granted by him, and complete by possession, before the rebellion.

Fol. Dic. v. 1. p. 256. Stair, v. 2. p. 51.

* * The like was decided, 23d February 1671, Lord Justice Clerk against Fairholm, No 14. p. 2766.

No 65.

1673. July 15. JANET SAVAGE against ANDREW CRAWFORD.

IN a suspension of a decret of poinding the ground obtained at the said Janet's instance, as infeft in an annualrent out of the lands of Bathgate, at the instance of Crawford, who was donatar to Bathgate's liferent escheat, upon this reason, that Bathgate was denounced rebel before the charger was infeft, and having continued year and day in rebellion, the liferent escheat belonged to the King, as was decided (Wallace against Porteous, *voce* LITIGIOUS,) in a competition betwixt a donatar and a lawful creditor, whose infeftment was after rebellion, but yet *in cursu*;—it was answered, That the charger, notwithstanding, ought to be preferred, because her infeftment depended upon an heritable bond which was prior to the denunciation, bearing a precept to infeft her in this annualrent and of the same lands, so that she taking infeftment before the donatar was year and day at the horn, could not be prejudged by the donatar of the liferent escheat which did fall long thereafter; and by the simple rebellion, the moveable escheat could only fall; likeas the said practise did not meet this case, seeing the infeftment was given after rebellion, not upon an heritable bond, but to a creditor by a personal bond. THE LORDS did find the letters orderly proceeded, and preferred the charger to the donatar, seeing her infeftment did not flow from any deed done by the debtor after his rebellion, but long before, and that her forbearance was no ground of law to prejudge her who had a full power to infeft herself when she pleased.

Fol. Dic. v. 1. p. 256. Gosford, MS. No 624. p. 362.

No 66.
Found in conformity with
No 57. p.
3660.