

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 decret.

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 disposed 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 infest 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 infestment or security was expedite; 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 presenti*, set a nineteen years tack to the excipient's author, which is yet unexpired, to begin after the said annual-rent was reedcemed; likeas now he

granted the same to be redeemed, and discharged the wadset, and confessed the payment of the sum, and took him only to the tack, which behoved to be respected, as if the annual-rent had been legally redeemed;—this allegiance was also repelled, seeing the annual-rent was never redeemed; after which redemption the tack was only appointed to take beginning; and the defender's granting of redemption could not be respected in his prejudice, who was singular successor, to make the tack have beginning, which was conferred to a time, which would never fall forth, seeing the wadset not being valid against this pursuer, the same would never be redeemed, being only personal, and so as he needed never know the wadset, no more could he be obliged to the tack; in respect whereof this exception was repelled.

No. 100.

Act. *Nicolson & Gilmor.*Alt. *Mowat & Gibson.*Clerk, *Scot.**Fol. Dic. v. 2. p. 420. Durie, p. 651.*1671. *June 21.*NEILSON *against* MENZIES.

No. 101.

One possessing by a tack, getting a new tack for a lesser tack-duty presently to commence, it was found, That he might ascribe his possession to the new tack, so as to prefer him to a singular successor.

Fol. Dic. v. 2. p. 421. Stair.

* * Gosford observes this decision differently, as if the second tack were a proration of the first, and to commence after expiry thereof.

See the particulars, No. 20. p. 7768. *voce* JUS SUPERVENIENS AUCTORI, &c.

1676. *February 24.*JOHNSTON *against* CULLEN.

No. 102.

A tack being granted by a husband, to another person, to the behoof his wife, to begin at the first term after the husband's decease, was not sustained against a singular successor; because the said tack was but a personal right, not being cald with possession, and the entry was conferred *in tempus indebitum*, to begin after the husband was denuded.

Found in conformity with
Hamilton v. Tenants,
No. 100.
p. 15230.

Fol. Dic. v. 2. p. 420. Dirleton, No. 346. p. 165.

* * Stair reports this case:

Isabel Cullen pursues the tenants of some tenements in Aberdeen for mails and duties. Her title is a tack granted by her husband to a confident person, to her behoof, as appears by the tenor of the tack, being "to endure during her life;" and, by an assignation granted by the tacksman to her, the entry of which tack is