

## S E C T. VI.

A person in possession by a voluntary deed cannot invert this possession, in prejudice of the Granter. The same holds with regard to legal Disponees.

1624. *January 15.* EARL OF ANNANDALE *against* Sir WILLIAM SCOTT.

ONE having a wadset of another, may not acquire another right in his prejudice, but if he redeem, he must renounce the same lands.

Sicklike in a comprising, in the action between the Earl of Annandale and Sir William Scott of Harden, the defender Sir William, to shun the restitution of the superplus of the duties of some lands intromitted with by him, by virtue of a comprising, *alleging* he could not be obliged to make count and reckoning for such and such years, because at that time he had acquired the heritable right of these lands, and so did not possess them by virtue of his comprising;—the LORDS found that he having once entered to these lands by virtue of his comprising, could cloath himself with no other supervenient title, nor be heard to say that he bruiked them *alio nomine* during the time of redemption, unless he could shew a necessity for him so to have done by reason of the former rights and securities.

*Fol. Dic. v. 1. p. 599. Spottiswood, (DOMINIUM.) p. 83.*

\*.\* Durie's report of this case is No 2. p. 294. *vace* ADJUDICATION.

1628. *March 25.* BLACKBURN *against* GIBSON.

IN a removing by Peter Blackburn *contra* William Gibson, the LORDS found a tack set to the defender, by the common debtor to both the parties, six days before the denunciation of the land set in tack, and upon which denunciation comprising was deduced, which comprising was the pursuer's title in this pursuit, to be a sufficient right to elide this pursuit, albeit the tacksman had not apprehended possession, before the denunciation and comprising, seeing it was set to the defender, for a just and true debt owing before, in satisfaction whereof the tack was set, and that no diligence was done by the pursuer against the said common debtor, before the setting of the said tack, which might hinder the excipient to take the said assedation, or the other to set the same; and in respect the said tack was clad with possession, diverse years before the intending of this removing, upon February 4th 1626, after the tack here mentioned was expired, this same comprising upon a warning then made, seeking removing; the LORDS found, that the defenders allegiance upon a comprising, after the

No 64.

No 65.

A tenant having comprised the lands which he possessed, was not allowed to attribute his possession, after his tack was expired, to the comprising, in competition with a prior comprising, *quia nemo potest mutare causam suae possessionis.*