

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