

SECT. VIII.

Whether the Reverser's possession validates Redeemable Rights, held Base.

1628. July 11. LA. COLLINGTON *against* JA. HASWELL.

In a removing, the Lady Collington *contra* Ja. Haswell, the pursuer being infest by Sir John Ker in the lands libelled, and having set back to him, a tack for a duty, containing clauses irritant, the said Sir John remaining in possession, and having paid diverse years, the duty of the back-tack to the pursuer; thereafter he disposes a part of the lands to the defender, who acquires, and continues seven years in real possession of the lands; here both pursuer and defender's infestments were base; and the defender, in respect of his right, albeit posterior, yet being many years clad with real possession, which he alleged, gave him preference to the pursuer's right, which was also base, and never clad with real possession as the excipient's was, conform to the 105th act, 7th Par. Ja. V.: who alleged that he could not be removed so summarily: Which allegiance was repelled, in respect of the pursuer's prior right, which they found clad with real possession, by setting of the back-tack, and receiving the duty thereof from his tacksman; neither was it respected, what the defender alleged; that the heritor, who was author of both, keeping and retaining still the real possession of the land; he was *in optima fide*, to take a right from him, whom he knew to be heritor, and was actual possessor of the ground; and the back-tack, set again by the pursuer to this author, could not be respected, and allowed as possession to the pursuer, as if he had set a tack thereof to a third person, which was repelled.

Act. ———. Alt. *Belshes*. Clerk, *Gibson*.

Fol. Dic. v. 1. p. 90. Durie, p. 387.

1678. January 11. LAWRIE *against* IRVING, &c.

In a competition between Irving and Lawrie, for the mails and duties of the lands of Logan, Irving craved preference, because he had apprised the land from the common author, and had charged the superior four years before Lawrie's right; which was a voluntary wadlet, with a back-tack never clad with possession.—It was *answered* for Lawrie, That he had the first infestment; and that albeit voluntary dispositions cannot prejudice legal diligence by apprising, as being a fraudulent gratification of the debtor; so that after denunciation, a voluntary disposition hath been excluded by an apprising upon that denunciation, though after the disposition and infestment, much more upon an apprising with a charge; but, in either case, it is but an incomplete diligence; and if it be not followed

No 50.
The heritor's possession by a back-tack, was found to validate a base infestment, where payment of the back-tack duty had been obtained.

No 51.
The heritor's possession by a back-tack, was found not to validate a base infestment of wadlet, unless payment of the back-tack duty had been obtained.