

No 4. the King, was reduced, and decerned to make no faith, yet that he might have defended his possession with the base infeftment holden of his author, or that he was tenant to him, his author's infeftment being good in itself; for that sentence of reduction would appear to prejudge him no more than if the defender had renounced that public infeftment, *quo casu* he could not have been hindered to return the other, or to allege himself tenant to his master, who had a right. But the LORDS found the contrary, that the public infeftment made the base to cease.

Act. Hope.

Alt. Aiton et. Oliphant.

Clerk, Scot.

Fol. Dic. v. 1. p. 200. Durie, p. 136.

1628. March 12.

E. DUMFERMLINE against COUNTESS.

No 5. A TACKSMAN acquiring the property of the lands from the letter of the tack, may, after the infeftment is taken out of the way, recur to his tack to defend himself against a third party. See No 2. p. 3082.

Fol. Dic. v. 1. p. 200.

* * See This case voce TACK.

1634. December 11.

L. LESMORE against HUTCHESON.

No 6.
A tacksman acquired a wadset of the lands. His right of wadset was set aside. He was found entitled to defend himself upon his tack against the donatar of the letter's liferent escheat, who had reduced his infeftment as granted in *cursum rebellio- nis*.

L. LESMORE, younger, being constitute assignee, by the L. Caprington, donatar to old L. Lesmore's liferent escheat; after general declarator, in an action of special declarator, he pursues one called Hutcheson for payment of the mails and duties of the lands of ——— pertaining to the rebel; and the defender defending himself with a tack of the lands, set to him by the rebel before his rebellion, the pursuer replied, that he had passed from that tack, in so far as, since the date thereof, he had accepted an heritable infeftment of these lands from the rebel, he then being rebel unrelaxed, whereby the tack became extinct, so that he cannot have recourse thereto; and therefore the heritable right being acquired thereafter, at the which time he being rebel, and not relaxed within the year, he could not dispoise the lands within the year, the rebellion being *in cursu*; so that whenever the year of his author's rebellion expired, his liferent of the lands must belong to the superior, and the same cannot be excluded by returning to the tack, which was absorbed by the heritable posterior wadset. And the defender duplying, That seeing the wadset is not a valid right to him, whereby to bruik, he may lawfully return to that right whereby he did bruik; for if his heritable infeftment were reduced, or that another had acquired a better right, which would give him preference to the lands before the excipient's right, *hiscasibus* his heritable right falling, he might return to his tack, and