

The teinds of Huntingtower belong to the Crown, and have been possessed under lease from it by the family of Athole; in consideration whereof, there is paid a yearly rent, and a composition at the renewal of each lease. On the demise of the Duke, the Duchess entered to the possession of her jointure lands, and paid duly to the Crown the teind-duty aforesaid.

The Duke of Athole, as tacksman of the teinds of Huntingtower, brought an action against the Duchess for payment of the full teinds since the time of her entry to her jointure-lands; and, in support of this action, he *pleaded*, That if a third party were tacksman of the teinds, he might exact them from the Duchess; nor would she have recourse against the pursuer, as representing the late Duke, his father, upon the warrandice in her marriage-contract, which contains no disposition of teinds: and as the right to the teinds is distinct from the right to the lands, the Duke is, with respect to the teinds, in the same condition as any other tacksman would be. Had the Duke made an absolute sale of the lands, he might still have levied the teinds from the purchaser; so also may he levy the teinds in this case where the lands are not disposed absolutely, but in liferent.

The Duchess Dowager *answered*, That had she apprehended that a demand for the full teinds would ever have been made, she might have obtained a lease of them from the Crown, upon payment of that composition which the Duke paid; the tacks have been granted for the benefit of the proprietor, that is, of the Duchess, during the subsistence of her liferent-right, and of the Duke at its expiry; the Duke must, therefore, communicate to the Duchess the benefit accruing from such tacks, in the same manner as he who procures a gift of his own ward must communicate the benefit thereof to his sub-vassals.

“THE LORDS found the defender entitled to the benefit of the Duke’s tacks, but that she must pay for her proportion of the composition paid in Exchequer, and the expenses of obtaining the said tacks corresponding to the rent of her liferent-lands included in the said tacks.”

Act. *A. Pringle, Ferguson.*
R-porter, *Woodhall.*

Alt. *Sir Da. Dairymple, Lockhart.*
Clerk, *Gibson.*

D.

Fac. Col. No 209. p. 306.

1792. November 14. KEITH against GRANT, &c.

No 18.

A PROPRIETOR of two estates, in one of which he was infest, in the other not, granted an heritable bond over both, in which the creditor was infest. On the debtor’s death, his heir entered *cum beneficio*, and thereupon took infestment in both estates. It was afterwards *objected* to the heritable bond, that *quoad* the estate in which the granter died not infest, the bond and infestment were inept, as flowing *a non habente potestatem*. *Answered*; This defect was removed by the

No 18. subsequent infeftment of the heir, who is *eadem persoua cum defuncto*, and *jus superveniens auctori accrescit successori*. But the COURT were of opinion, That the *jus superveniens* could not accresce in this case ; for a sasine obtained *a non habente*, cannot be cured by any supervening right in the heir.

Fac. Col.

. This case is No 12. p. 2933. voce CONDICTIO INDEBITI

S E C T. III.

To which Successor does the Right accresce ?

1663. January 16.

TENANTS of KILCHATTON against LADY KILCHATTON.

No 19.

THE author's right was an infeftment null for want of confirmation, out of which was granted a base infeftment of annualrent to one creditor, and thereafter an apprising led thereof by another, with infeftment. After all, the author's right was confirmed by the King, which was found to accresce to the base infeftment of an annualrent, as being the first completed right *in suo genere*.

Fol. Dic. v. I. p. 515. Stair.

. This case is No 1. p. 1259. voce BASE INFESTMENT.

1671. June 21.

JOHN NEILSON against MENZIES of Enoch.

No 20.
An author's infeftment was found to accresce to a tack granted with absolute warrandice, and not to a posterior disposition of the lands; though it was offered to be proved, that the infeftment was procured by the disponee's means; and,

JOHN NIELSON, as assignee constituted by John Crichton, pursues Menzies of Enoch for the rents of certain lands in Enoch, upon this ground, that there was a tack set by James Menzies of Enoch of the said lands, to the said John Crichton for 19 years, for payment of fourscore pounds Scots yearly of tack-duty: Thereafter, by a decret-arbitral betwixt Enoch and his eldest son Robert, he is decerned to denude himself of the said lands, in favour of Robert, reserving his own liferent: After which decret, Robert grants a second tack to Crichton, relating and confirming the first 19 years tack, and setting the land of new again for five merks of tack-duty, instead of the fourscore pounds: After which tack, Robert disposes the land, irredeemably, to Birthwood; but, at that time, Robert was not infeft; but, upon the very same day that the