

he was in possession by virtue of the sub-tack, which was enough to maintain the same, being so clad with real possession of the lands, and which was as sufficient as an intimation; so that, after the said sub-tack, the tacksman could do no deed to the pursuer which could derogate to that right acquired lawfully before. The Lords sustained the renunciation foresaid, albeit done after the sub-tack, notwithstanding of the alleged possession, because the sub-tacksman was in possession of the lands divers years before he acquired the said sub-tack; so that the continuation of that possession, which he had before, could not be ascribed to the sub-tack to be any impediment to hinder the pursuer to receive the said renunciation, and to make it unprofitable to him, except the right of the sub-tack had been formally and specifically intimated to him, as said is.

Act. *Hope.*Alt. *Stuart & Cunningham.*Clerk, *Hay.**Fol. Dic. v. 2 p. 421. Durie, p. 177. & 182.*

No. 95.

1627. *June 23.**M'MILLAN against GORDON.*

A spuilzie of teinds being pursued by the sub-tacksman's assignee, this exception was proponed for the defender, viz. That he had a sub-tack from the same tacksman, which, though posterior in date, yet was clothed with continual possession ever since the principal tacksman ceased to possess, whereas the pursuer never was in possession. The exception was sustained.

Fol. Dic. v. 2. p. 420. Durie.

No. 96.

* * * This case is No. 81. p. 7018. *voce* INHIBITION.1627. *July.**BLAIR against _____.*

Found a tack valid after a comprising, whereof the entry was _____ after the comprising and sasine, in respect of the tacksman's diligence before the comprising; and thereafter repelled, in respect of the reply of retention in the person of the lessor.

Kerse MS. p. 104.

No. 97.

1627. *July 11.**WALLACE against HARVEY.*

A tack was preferred to a comprising, in respect it was set before the denunciation, and clad with possession before sasine on the comprising; but, thereafter, it having been made appear to the Lords, that the compriser's sasine was prior to the possession attained by the tacksman, they preferred the compriser, although, be-

No. 98.