

No 50.
was in possession, the Lords preferred this creditor to a posterior compriser not infest.

not this pursuer, notwithstanding that the tack expressly bore, and appointed the duty to be paid to him; and albeit it had taken effect by possession, before his comprising; for albeit the compriser, during the space of the tack, the same being set, as said is, before the comprising, could not move the tacksman; yet he had right to the tack-duty, seeing the setter of the tack could not appoint the duty to be paid to any other person effectually, so as it could last longer than he himself remained heritor; and his right being comprised from him, the duty could not pertain to that person to whom he had appointed the payment thereof to be made, after his own right was taken from him. The cause being thereafter called, 27th February 1627, the contrary hereof was found, and the tack-duty found due to him to whom the tack was appointed to be paid; which was *de novo* done over again in favour of the tacksman and pursuer.

Act. Stuart.

Alt. —.

Clerk, Hay.

Fol. Dic. v. 1. p. 181. Durie, p. 271.

No 51.

1628. March 27. LORD BLANTYRE *against* PARISHIONERS of BOTHWELL.

A TACKSMAN of teinds having assigned the teind-sheaves, payable by the heritors, in security and payment of a debt; this was found only a personal right, though clad with possession, and was not sustained to compete with a posterior assignee to the tack itself, a tack being a real right.

Fol. Dic. v. 1. p. 181.

* * * See The particulars of this case, No 7. p. 1780.

No 52.

1628. December 13. HUNTLY *against* HUME.

THE cedent continuing still proprietor of the lands, notwithstanding of assignation to the mails and duties, must have a power of alienation; and of consequence the purchaser, who has right to the lands, must of necessary consequence have right to the produce of the lands; therefore it is, that the assignee's right to mails and duties, which is only a personal claim against possessors, and no real right in the lands, must fall as soon as the cedent is denuded by infestment.

Fol. Dic. v. 1. p. 181.

* * * See The particulars of this case, No 12. p. 2764.