

husband, to whom the bond was given, could not be heard to pursue upon this bond, nor clothe herself therewith, seeing she will not have right to the sums lent in the bond, but falls under the husband's testament, and pertains to his executors, and so she cannot have right to bruik thereby;—all which was repelled, and the bond found a real right to maintain the wife in possession, while the sum were paid to any having right to receive the same; seeing by the bond it was so provided, that she should retain the possession; and seeing the bond bore the clause aforesaid, “that it should be as sufficient as a tack:” And where it was alleged, that the bond was perpetual, wanting a certain time of ish; it was also repelled, by reason albeit it had not therein a precise determinate time specially, yet it had a time of ish, viz. at the payment of the money; sicklike as in tacks set in wadsets, during the non-redemption, which has no other certain special time of ish but indefinite, when the tacksman pleases to redeem; and this right was found good to defend against a singular successor sicklike as against the granter's self, if he had been pursuing removing: And where it was alleged to be usury, as said is, the Lords reduced the proportion of the annual-rent only to ten for each hundred, and the said bond had a special duty therein insert, and so differs from the other decisions here marked.

Act. Hope & Mowat.

Alt. Belshes & Lermonth.

Clerk, Hay.

Fol. Dic. v. 2. p. 422. Durie, p. 158.

* * Kerse reports this case :

Found a bond that a person should bruik ay and while the sum therein contained was paid, to be a good and real right *contra singularem successorem*, because the bond bore entry, ish, and duty; and the Lords found, that albeit the ish was not definite, but astricted to the repayment of the money, yet it should be valued *contra singulorem successorem*.

Kerse MS. p. 104.

1628. July 12.

BENNET *against* TURNBULL.

By contract, lands being disponed, not in the form of a real right, but simply to be possessed, without paying any duty in place of the annual-rent of a sum owing by the disponer, and with power to retain possession till the principal was repaid, this was not found good to defend against a singular successor.

Fol. Dic. v. 2. p. 423. Durie.

* * This case is No. 11. p. 2181. *voce* CITATION.