

1632. July 21. MR. NICOL BANNATINE *against* JOHN SCOT.

No. 156.

In conformity
with the
above.

Mr. Nicol Bannatine being heritably infeft in the lands of Newhall, redeemable upon 2,000 merks, set a back-tack to the Laird of Braid, disponer, for payment of 200 merks yearly. After Braid had disponed the same lands to John Scot, Mr. Nicol raised summons against John Scot, and the tenants and possessors of Newhall, to hear them decerned to make payment to him of the by-gone back-tack duties, and to find caution in time coming for payment thereof, or otherwise to remove. Alleged, They could not be convened for payment of the back-tack duties, *personali exceptione*, but only Braid, to whom it was set, and his heirs. Replied, That ought to be repelled, in respect they are possessors of the ground, which is affected with the back-tack duty; so that whosoever is heritor or possessor must be liable thereto. The Lords repelled the exception.

Spottiswood, p. 328.

1664. February 13. HODGE *against* BROWN.

No. 157.

Compensation upon a debt due by the tacksman to his sub-tenant, was found competent to be proponed against the master, compensation being payment in law.

Fol. Dic. v. 2. p. 424. Gilmour.

* * * This case is No. 118. p. 2651. *voce* COMPENSATION.

1665. January 31. ANDERSON *against* TOWN of EDINBURGH.

No. 158.

The setter is preferable for his tack-duty, to every creditor of the principal tacksman, arresting in the sub-tenant's hands, and has direct action against the sub-tenant, unless where payment is made *bona fide* before. This was found in the case of a sub-tenant of the customs of Edinburgh, and obtains *multo magis* in the case of lands, where there is a tacit hypothec.

Fol. Dic. v. 2. p. 424. Newbyth. Gilmour. Stair.

* * * This case is No. 39. p. 6235. *voce* HYPOTHEC.

1674. November 24. PATON *against* COUSTOUN.

No. 159.

In conformity
with Turn-
bull *against*
Scot, *supra*.

James Gibb having set a tack of his coal to William Brown, the said William Brown assigned the said tack to William Couston. There is a sub-tack granted by