

SECT. VIII.

Whether the Reverser's possession validates Redeemable Rights, held Base.

1628. July 11. LA. COLLINGTON *against* JA. HASWELL.

In a removing, the Lady Collington *contra* Ja. Haswell, the pursuer being infest by Sir John Ker in the lands libelled, and having set back to him, a tack for a duty, containing clauses irritant, the said Sir John remaining in possession, and having paid diverse years, the duty of the back-tack to the pursuer; thereafter he disposes a part of the lands to the defender, who acquires, and continues seven years in real possession of the lands; here both pursuer and defender's infestments were base; and the defender, in respect of his right, albeit posterior, yet being many years clad with real possession, which he alleged, gave him preference to the pursuer's right, which was also base, and never clad with real possession as the excipient's was, conform to the 105th act, 7th Par. Ja. V.: who alleged that he could not be removed so summarily: Which allegiance was repelled, in respect of the pursuer's prior right, which they found clad with real possession, by setting of the back-tack, and receiving the duty thereof from his tacksman; neither was it respected, what the defender alleged; that the heritor, who was author of both, keeping and retaining still the real possession of the land; he was *in optima fide*, to take a right from him, whom he knew to be heritor, and was actual possessor of the ground; and the back-tack, set again by the pursuer to this author, could not be respected, and allowed as possession to the pursuer, as if he had set a tack thereof to a third person, which was repelled.

Act. ———. Alt. *Belshes*. Clerk, *Gibson*.

Fol. Dic. v. 1. p. 90. Durie, p. 387.

1678. January 11. LAWRIE *against* IRVING, &c.

In a competition between Irving and Lawrie, for the mails and duties of the lands of Logan, Irving craved preference, because he had apprised the land from the common author, and had charged the superior four years before Lawrie's right; which was a voluntary wadlet, with a back-tack never clad with possession.—It was *answered* for Lawrie, That he had the first infestment; and that albeit voluntary dispositions cannot prejudice legal diligence by apprising, as being a fraudulent gratification of the debtor; so that after denunciation, a voluntary disposition hath been excluded by an apprising upon that denunciation, though after the disposition and infestment, much more upon an apprising with a charge; but, in either case, it is but an incomplete diligence; and if it be not followed

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The heritor's possession by a back-tack, was found to validate a base infestment, where payment of the back-tack duty had been obtained.

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The heritor's possession by a back-tack, was found not to validate a base infestment of wadlet, unless payment of the back-tack duty had been obtained.

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till it attain effect, posterior accomplished rights will be preferred, otherwise a denunciation to apprise would be equivalent to an inhibition; so that the denunciation is only valid to prefer, if an apprising follow upon the day denounced to; and therefore some time must be required; that an apprising should proceed further than a charge, by compelling the superior to enter, or his superior to supply, at least within a year, otherwise a comprising and charge should insecure all purchasers, and make useless registers of sasines; for though of late allowances of apprisings be ordained to be registered, the certification is only *that a posterior apprising first registered shall be preferred*; which says nothing as to voluntary rights, nor to any right before that act, and would necessitate all purchasers to look after all apprisings, whether they had a charge or not; so that this appriiser having been supinely negligent for four years, the wadset is preferable, and the heritors possession by the back-tack validates the wadset.

THE LORDS found the heritors possession by the back-tack, did not validate the wadset, unless payment of the back-tack duty were obtained; but as to an apprising with a charge, whether it required any more diligence to prefer, the Lords resolved to hear it in their presence.

Fol. Dic. v. 1. p. 90. Stair, v. 2. p. 591.

S E C T. IX.

Possession of the Principal Lands held to be Possession of the
Warrandice Lands.

No 52.

1666. *January 9.* ELIZABETH BROWN *against* JOHN SCOT.

In this case, where the infestment of warrandice was of the same date with that of the principal lands; the Lords found, that possession of the principal lands validated the base right of the warrandice lands. This was posterior to the act 1617, ordaining the registration of sasines.

THERE being an infestment feu granted of the lands of Ingliftoun, as principal, and of the lands of Fingland; in warrandice thereof long ago, and infestment taken of both principal and warrandice lands, in one sasine, registrate in the register of sasines, since the year 1617; thereafter the warrandice lands were disposed to the Earl of Traquair; and he, being publicly infest, gave a subaltern infestment to his vassal, who assigned John Scot to the mails and duties; who having arrested, *insisted* to make furthcoming: And likewise Elizabeth Brown having, after the eviction of the principal lands, arrested the rents of the warrandice lands, *insisted* to make the same furthcoming to her.—It was *alleged*, That the original infestment whereupon the said Elizabeth Brown's right is founded, is a base infestment; and as to the warrandice lands, never clad with possession, and the Earl of Traquair's right, whereon John Scot's right is founded, is a public infestment holden of the King, which is always preferred to base infestment, without consideration whether the public infestment has attained possession or not,