

## S E C T. VI.

A person in possession by a voluntary deed cannot invert this possession, in prejudice of the Granter. The same holds with regard to legal Disponees.

1624. *January 15.* EARL OF ANNANDALE *against* Sir WILLIAM SCOTT.

ONE having a wadset of another, may not acquire another right in his prejudice, but if he redeem, he must renounce the same lands.

Sicklike in a comprising, in the action between the Earl of Annandale and Sir William Scott of Harden, the defender Sir William, to shun the restitution of the superplus of the duties of some lands intromitted with by him, by virtue of a comprising, *alleging* he could not be obliged to make count and reckoning for such and such years, because at that time he had acquired the heritable right of these lands, and so did not possess them by virtue of his comprising;—the LORDS found that he having once entered to these lands by virtue of his comprising, could cloath himself with no other supervenient title, nor be heard to say that he bruiked them *alio nomine* during the time of redemption, unless he could shew a necessity for him so to have done by reason of the former rights and securities.

*Fol. Dic. v. 1. p. 599. Spottiswood, (DOMINIUM.) p. 83.*

\*.\* Durie's report of this case is No 2. p. 294. *vace* ADJUDICATION.

1628. *March 25.* BLACKBURN *against* GIBSON.

IN a removing by Peter Blackburn *contra* William Gibson, the LORDS found a tack set to the defender, by the common debtor to both the parties, six days before the denunciation of the land set in tack, and upon which denunciation comprising was deduced, which comprising was the pursuer's title in this pursuit, to be a sufficient right to elide this pursuit, albeit the tacksman had not apprehended possession, before the denunciation and comprising, seeing it was set to the defender, for a just and true debt owing before, in satisfaction whereof the tack was set, and that no diligence was done by the pursuer against the said common debtor, before the setting of the said tack, which might hinder the excipient to take the said assedation, or the other to set the same; and in respect the said tack was clad with possession, diverse years before the intending of this removing, upon February 4th 1626, after the tack here mentioned was expired, this same comprising upon a warning then made, seeking removing; the LORDS found, that the defenders allegiance upon a comprising, after the

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A tenant having comprised the lands which he possessed, was not allowed to attribute his possession, after his tack was expired, to the comprising, in competition with a prior comprising, *quia nemo potest mutare causam suae possessionis.*

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pursuer's comprising, three months deduced, within the time of his tack, could not defend against the prior comprising, notwithstanding of the possession had by the defender, which they found could not be ascribed to the comprising, as the defender would, seeing it was apprehended by the tack, after the expiring whereof he could not *mutare causam suæ possessionis*, in prejudice of the pursuer's prior comprising, *et sic in prejudicium alterius*, the prior comprising having done diligence; for the first warning made by him was an argument thereof, albeit it took no effect, by reason of the tack, and which the LORDS sustained, seeing it was made before the defender's comprising; neither was it respected, that the defender alleged the denunciation to have preceded the warning, and so would have ascribed the continuing of his possession to the comprising, which was repelled as said is.

Act. *Mowat.*Alt. *Cunningham.*Clerk, *Gibson.*

1629. *January 30.*—AN exception upon a comprising clad with possession diverse years before the warning, was not sustained against a removing founded upon a prior comprising, seeing the excipient's possession, which he had before the warning, was by virtue of a tack, which he had then standing, and before the warning the tack was expired; after the expiring whereof albeit he continued his possession, yet the same cannot make his second comprising to prevail against the prior, he acquiring no possession legally, by virtue of his comprising, but continuing that which he had by virtue of the tack before. *See TACK.*

Act. ———

Alt. *Gibson.*Clerk, *May.**Fol. Dic. v. 1. p. 598. Durie, p. 370. & 420.*

No 66.

Found in conformity with  
Earl of Anandale a-  
gainst Scot,  
No 64.  
P. 9211.

1683. *March.*

GRANT against GRANT.

GEORGE GRANT, as having right to several expired apprisings of the lands of Kirdells, pursues a declarator of expiring of the legal. *Alleged* for Colonel Patrick Grant, who had right to the reversion of the lands, That the pursuer was satisfied and paid by intromission with the rents of the lands, within the years of the legal. *Answered*, That any intromission he had was by virtue of a factory from the donatar of Grant of Kirdell's liferent escheat, who had obtained a decret of special declarator against the defender, both for the bygone rents, and in time coming, which gift was preferable to the apprising. *Replied*, That the pursuer having entered to the possession, and intromitted with the rents several years before the gift of escheat, he cannot ascribe his intromission to the gift of *escheat*, as having a factory from the donatar, especially seeing it is offered to *be proven*, by the donatar's oath, that the gift was acquired to the defender's *behoof*; and it appears that the decret recovered at the instance of