

tar, by virtue of any subsequent rebellion after his right, the LORDS repelled this allegiance, and found, that the donatar had right thereto, in respect the infeftment excepted upon, was confessed to be a base infeftment, and not clothed with possession, and therefore could not be valid to seclude the donatar, no more than the base infeftment foresaid would have excluded a posterior public right, acquired after the base, being clothed with possession: But this instance of the public right, clad with possession, meets not this case, where none of the parties are in possession, but are presently claiming the same; and if, in the instance adduced, the prior base right, and the posterior public, were contending for the possession, the same scruple would remain.

Act. *Stuart.*Alt. *Nicolson & Belsbes.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 256. Durie, p. 680.*

No 61.
unless either confirmed or clothed with possession before the annual rebellion existed.

1634. *December 3.*LINDSAY *against* SCOT.

MR JAMES LINDSAY, servitor to the Bishop of Glasgow, having obtained the gift of liferent of Scot of Well, and general declarator thereupon, pursues special declarator against one Scot, for the mails and duties of the lands of —, whereof the defenders alleging, that they had a contract of alienation of the said lands, under reversion, made to them by the rebel's father, and by virtue thereof they had been 38 years in possession; and the donatar *answering*, that it was not a good right, which could militate against the donatar, not being real, nor any infeftment taken thereon, no more than it would meet a singular successor. THE LORDS repelled the allegiance, and found, that the contract of wadset granted by the rebel's father, could not defend now after the decease of the father, his son being rebel, who was his apparent heir; seeing the defender had no real right, without which it would not meet the singular successor, nor the donatar, who now was as favourable as a singular successor, and more favourable than any other, in respect he had the superior's right, in whose person there was an heritable right of the land, which carried with it the effect of the property, so long as there was not a legal vassal, and this cannot exclude the superior's self, and no more his donatar.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 256. Durie, p. 738.*

No 62.
Found in conformity with No 57. p. 3659.

1642. *February 8.*WEDDEL *against* E. FINLATER.

ONE Weddel having comprised James Ogilvy's lands, and being infeft therein by the Earl of Finlater's precept, who was superior; wherein it was provided, that that entry should be without prejudice of the Earl's right to the land, by

No 63.
Found in conformity with No 50. p. 3659.