

SECT. II.

Heirs have right to Tacks without Service.

2623. February. 14. RATTRAY against GRAHAM.

No. 13.

THOUGH the apparent heir may bruik, he cannot assign the tack without being served.

Fol. Dic. v. 2. p. 366. Durie, Haddington.

* * * This case is No. 45. p. 10366. *voce* PERSONAL and TRANSMISSIBLE.

1635. June 19. RULE against HUME.

No. 14.

Incomprising a tack from the debtors representative, found, that there needed no special charge to enter heir, because the heir had right to the tack without service.

JAMES RULE, after decret obtained against Alexander Hume, as lawfully charged to enter heir to umquhile Andrew Hume, his father, for registration of a bond of 3000 merks, addebted to him by the said umquhile Andrew, he thereafter comprises from his said son, as lawfully charged to enter heir, the lands of , with all contracts, tacks, and rights thereof, which were in the said umquhile Andrew's person; and thereafter pursues for the mails and duties thereof. This action was sustained at the compriser's instance, albeit it was alleged that the comprising was null, and could not produce the action libelled, for payment of the mails of the lands; because there ought to have been a special charge, executed at the pursuer's instance against the defender, charging him to enter specially to the lands, which he intended to comprise; before which had been done, there could not be any comprising deduced of the lands. *2do*, He alleged that the pursuer was not infest, without which he could have no action upon his bare comprising for mails and duties. These allegiances were repelled, seeing the debtor was never infest in the lands, but bruiked by a tack, so that there needed no special charge to precede the comprising of a tack, and of the debtor's right constituted without sasine, as is required where the debtor is infest, *quo casu* the person charged to enter heir to the defunct, ought to be specially charged to enter heir in these lands, or else no comprising could be lawfully deduced: And also found, that the compriser needed not to be seised, nor could be seised, seeing the debtor was not seised, but that he bruiked by virtue of a tack, and as he might have pursued by virtue of the tack for the mails, so might this compriser of his right likewise. See TITLE TO PURSUE.

Act. Craig.

Alt.

Gibson, Clerk.

Fol. Dic. v. 2. p. 366. Durie, p. 767.