

No 18. subsequent infeftment of the heir, who is *eadem persoua cum defuncto*, and *jus superveniens auctori accrescit successori*. But the COURT were of opinion, That the *jus superveniens* could not accresce in this case ; for a sasine obtained *a non habente*, cannot be cured by any supervening right in the heir.

Fac. Col.

. This case is No 12. p. 2933. voce CONDICTIO INDEBITI

S E C T. III.

To which Successor does the Right accresce ?

1663. January 16.

TENANTS of KILCHATTON against LADY KILCHATTON.

No 19.

THE author's right was an infeftment null for want of confirmation, out of which was granted a base infeftment of annualrent to one creditor, and thereafter an apprising led thereof by another, with infeftment. After all, the author's right was confirmed by the King, which was found to accresce to the base infeftment of an annualrent, as being the first completed right *in suo genere*.

Fol. Dic. v. I. p. 515. Stair.

. This case is No 1. p. 1259. voce BASE INFESTMENT.

1671. June 21.

JOHN NEILSON against MENZIES of Enoch.

No 20.
An author's infeftment was found to accresce to a tack granted with absolute warrandice, and not to a posterior disposition of the lands; though it was offered to be proved, that the infeftment was procured by the disponee's means; and,

JOHN NIELSON, as assignee constituted by John Crichton, pursues Menzies of Enoch for the rents of certain lands in Enoch, upon this ground, that there was a tack set by James Menzies of Enoch of the said lands, to the said John Crichton for 19 years, for payment of fourscore pounds Scots yearly of tack-duty: Thereafter, by a decret-arbitral betwixt Enoch and his eldest son Robert, he is decerned to denude himself of the said lands, in favour of Robert, reserving his own liferent: After which decret, Robert grants a second tack to Crichton, relating and confirming the first 19 years tack, and setting the land of new again for five merks of tack-duty, instead of the fourscore pounds: After which tack, Robert disposes the land, irredeemably, to Birthwood; but, at that time, Robert was not infeft; but, upon the very same day that the