

other ; and the charger was minor. The Lords found the reason was *jus tertii* to the debtor, and the charger had right to uplift, notwithstanding the said substitution, seeing she was now married. *Vol. I. Page 644.*

1694. *November 23.* MR GEORGE HALIBURTON of INCHCAIRNY *against* DARG and LEVISTON in Dirleton.

THEIR defences were founded on a tack, bearing the receipt of 350 merks, and allowing them to retain the rent of the acre and an half, set in satisfaction of the annualrent. It being OBJECTED the tack was null, as wanting both a definite ish and specific tack-duty, without which no tack could subsist, these being *de essentia* ;—it was ANSWERED, The redemption was the termination, and the annualrent was the tack-duty.

The Lords found it null against the pursuer, who was an appriser, and so a singular successor, whatever it might operate against the granter's heirs. Which was conform to Craig, *tit. de Locationibus* ; and Durie, *31st January 1627, Ross* ; *28th November 1635, Morison* ; and Stair, *15th June 1664, Thomson* ; and *5th February 1680, Rae.* *Vol. I. Page 645.*

1694. *November 23.* JOHN HAMILTON *against* MILLERS, and ALEXANDER HAMILTON of KINKELL.

THE Lords would not restrict the paternal power, if the defenders could assign any rational cause why he passed by his only son of the marriage, and gave him but 2000 merks, whereas he gave one of his daughters 4000 merks ; in so far as, in her contract-matrimonial, he gave 2000 merks ; and, having settled 1700 merks on another daughter, with a power to alter on her death, he bestowed that 1700 merks also on the other daughter.

The Lords not thinking fit to narrow the father's power too much, they divided the 1700 merks between them, and gave the son the half of it ; remembering that, both in Andrew Bruce's case, and Bailie Thomas Wylie's, they had found the father fiar, and stood to the division he had made amongst his children ; and that parents, notwithstanding of provisions and destinations in their first contract of marriage, were not thereby impeded to provide a second wife and children to a moderate provision ; and, though he was heir, yet, being but heir of provision, he was also a creditor. See Stair, *13th February 1677, Fraser.* *Vol. I. Page 645.*

1694. *November 23.* JANET HAMILTON, *against* RAPLOCH, her Brother.

JANET Hamilton, relict of Samuel Winram, pursues Raploch, her brother, for 400 merks, due by her father, conform to bond, whereto she had an assignation. He offers to prove, by her oath, that this debt was paid by her father, and an