

No. 165.

1750. *November 16.* WALLACE *against* CAMPBELL.

A debtor who possessed a tack of a house, conveyed the tack to his brother, along with the household plenishing, on condition, that the brother should relieve him of his debts, some of which he concealed from him. The brother again gave a sub-tack of the house to the debtor, for a moderate rent, for a certain number of years, during which time it was hoped that the debts might be cleared off. One of the creditors, for whose debt the brother had not become bound, raised an adjudication, and thereupon a process of mails and duties; and here the brother produced his interest, and insisted for a preference on his assignation to the tack. Objected for the adjudger, That the assignation was a private transference in fraud of creditors, and besides did not convey the right, not being clothed with possession. Answered, That the assignee possessed by his sub-tacksman, which certainly completed the transference; and that the assignation of a tack requires no public intimation, but is completed by the assignee's possession, or, which is the same thing, by his sub-setting it. The Court, however, preferred the adjudger to the assignee.

Fol. Dic. v. 4. p. 324. Rem. Dec. Kilkerran. D. Falconer.

. This case is No. 48. p. 2805. *voce* COMPETITION.

1770. *November 22.*

ARCHIBALD TROTTER, Merchant in Edinburgh, *against* ALEXANDER DENNIS, Tenant in Eastraw, and Others.

No. 166.
If, in a tack for 57 years, an exclusion of assignees excludes also sub-tenants?

Robert Mowbray, the pursuer's author in the estate of Castle-Law, granted a tack "to William Dennis and Elizabeth Burton his wife, and longest liver of them two; and failing both of them by decease, to the said Alexander Dennis, and to the heirs of the said Alexander, excluding the assignees of all and each of them," of the lands of Eastraw, for the space of fifty-seven years. Alexander Dennis having succeeded to the lease in the year 1757, found it convenient to sub-set some parts of the farm to different persons; upon which Mr. Trotter brought an action, "concluding for reduction of the principal tack, and of the assignations and sub-sets that may have been granted; at least to have it found that Alexander Dennis and his heirs have the only right to possess the said lands, and that they ought sufficiently to stock the same; and in case they should fail to enter to possession of the lands, stock and labour the same, &c. that the said tack is forfeited; and that the whole defenders ought to remove from their respective possessions."

Pleaded for the pursuer:

It was established law, that the seclusion of assignees rendered the right so personal to the tacksman and his heirs, that it even debarred creditors from affecting