security for a debt; for that if the tenant may thus assign the lease to one creditor, he may, by parity of reason, assign it to all his creditors successively, whereby he and they would alternately possess the farm; no master can be presumed to have granted a lease on terms so manifestly detrimental. No 87.

"THE LORDS found that the pursuer had no title to insist in this action."

Act. *Garden, D. Dalrymple.* Alt. *Hay, A. Pringle, Lockhart.* Clerk, *Kirkpatrick.*

*D.* *Fac. Col. No 218. p. 316.*

---

1759. *February* 14. GEORGE HEPBURN *against* JOSEPH BURN.

No 88.
A tack, tho' excluding assignees and subtenants, may yet be assigned by the tenant to his eldest son.

IN this case, a tack having been granted "to a tenant, his heirs, and executors, secluding assignees and subtenants of no higher degree that himself, and whom the heritor should be content with, and accept of allenarly;" and the tenant, who had fallen in arrear of rent, and become bankrupt, having executed an assignation of his tack, of which fifty years were to run, in favour of his eldest son, who new-stocked the farm, and entered into possession thereof; and thereafter the heritor having obtained from the father a renunciation of his tack, upon which a process of removing was brought against him before the Sheriff of the county, compearance was made for the son, the assignee. The Sheriff found, "That the assignation being cloathed with possession long prior to the date of the renunciation, was preferable thereto; and therefore dismissed the removing."

A bill of advocation was offered against this judgment, and reported to the Court.

*Pleaded* for the heritor; A tack, excluding all assignees without distinction, cannot be effectually assigned to the tacksman's eldest son. Tacks are understood to be *strictissimi juris*. The convention of parties here expressly excludes all assignations; and it may be of bad consequence to proprietors in general, if assignations such as the present should be sustained. At this rate, when a tenant becomes bankrupt, he may elude the master's just right and privilege of removing him from his possession if he cannot find caution, by a conveyance to his eldest son, though an infant; and then, as administrator-in-law for his son, he continues to have the full administration and enjoyment of the tack, as fully, in every respect, as if he had never been divested thereof.

2*do*, The assignation founded on, was a latent deed, without any intimation; and the pretence of possession upon it by the son, was a mere sham, while the father continued to dwell openly upon the farm; it was a fraudulent and collusive contrivance to disappoint the master, who, being ignorant thereof, gave the father an onerous consideration for the renunciation.

*Answered* to the *first*; The landlord, by granting the tack to heirs, has given them an indefeasible right to take and hold that tack. The heir, upon his

No 88. existence, has a right to the tack, precluded only by the right of his father or predecessor; and whenever the father thinks proper to yeild that preference to the heir, no person is injured, or entitled to complain. Whether the heir is old or young, can be of no consequence; for by the conception of the tack, the heir is called to the possession, though he was but just born, or was even *in utero* at the time of his father's death. The landlord has no right or privilege after he has granted a tack, but to receive or secure his tack-duty. The possession of the farm is as much the right and privilege of the tenant, by virtue of his tack, as the landlord's property is by his charter. And as the son, in this case, has new-stocked the farm, cultivated it properly, and hitherto paid his rent punctually, the landlord has no title to ask more, or to turn him out of a beneficial farm, of which he is lawfully in possession.

To the *second*, It is clear from the proof adduced, that the son entered to possession of the farm many months prior to the renunciation, and has publicly possessed the same ever since; being assisted with money for stocking, and in the management thereof, by his friends, solely for his own behoof. Nor is there the least ground for alleging fraud against the son, in whom it was natural and proper to accept of this assignation of a profitable tack. And with regard to the onerous cause said to be given to the father for granting the posterior renunciation, there is no evidence produced of the fact; and, at any rate, a person once divested, even by a gratuitous deed, has no right to make any posterior conveyance, either gratuitous or onerous.

"THE LORDS refused the bill of advocation."

Act. *Garden.* Alt. *And. Pringle.*

*G. C.* *Fol. Dic. v.* 4. *p.* 74. *Fac. Col. No* 171. *p.* 304.

---

1770. *November* 21.

JOHN and WILLIAM CUNINGHAM & Co. JAMES HOTCHKIS & Co. and JAMES GRAHAM, for themselves, and as Trustees of William M'Gregor, *against* ROBERT HAMILTON, Esq. of Wishaw.

No 89. A tack for 57 years, secluding assignees and sub-tenants, found not adjudgeable.

CHARLES HAMILTON, late of Wishaw, granted a tack to William M'Gregor and his heirs, secluding subtenants and assignees, of the lands of Easter-park and Birkenhill, for 57 years, from Martinmas 1761. Prior to the year 1767, M'Gregor became debtor to Wishaw in considerable sums, as also to the other parties in this competition. Wishaw adjudged the debtor's lands; and the other creditors having done the same within year and day, a multiple-poinding was brought in name of the tenants, calling Wishaw and the other creditors to dispute their preference. The several adjudications of M'Gregor's subjects being produced, it was objected on the part of Wishaw, that the tack of 12th