*** Dirleton reports this case:

No 68.

A FATHER having infeft his grand-child in fee of his estate, and his son, father to the fiar, in liferent, with a provision that the liferent should be alimentary to him; the LORDS, upon a debate amongst themselves concerning the said qualification of the liferent, were of the opinion, That the son being provided before to some other lands simply, without the said quality, the creditors of the son might, by their diligence, affect the said alimentary liferent; except so much of the same as the Lords should think fit to reserve for a competent aliment to the son; but there was not a decision in the case.

Clerk, *Hay*.

Dirleton, No 455. *p.* 221.

1680. *June* 21. HUME *against* LYELL.

No 69.
Tacks are personal, and cannot be conveyed to assignees, unless expressed.

MARGARET HUME being infeft in liferent in the lands of Belleta, obtained decreet against Janet Lyell and her mother, and their tenants, to remove; who suspend on this reason, That in the charger's infeftment the defender's liferent was reserved, she being first infeft. It was *answered*, That the suspender having set a tack to her son for years to run, the same doth accresce to the charger, his relict, whom he infeft with absolute warrandice. It was *replied*, That the tack is only to the son, and mentions not heirs and assignees; and it is a known principle, that tacks are *strictissimi juris*, and not assigneable, when assignees are not expressed. It was *duplied* for the charger, That this can only be extended to exclude strangers, to whom the settet is not presumed to design the tack; but this cannot hold in prejudice of the tacksman's heir, or his relict; 2*do*, The suspender hath homologated the tack, by accepting the tack-duty from the relict, for terms after her husband's death. It was *triplied*, That the *maxime* is founded upon the nature of the right, wherein the masters of the ground affect a particular choise in their tenants, which therefore can be extended no further than the tacks bear, and so neither to assignees nor sub-tenants; and there is no necessity of a clause to exclude assignees, though *ex superabundanti* that clause sometimes useth to be adjected, seeing the exclusion *inest ex natura rei*.

THE LORDS found this tack not assigneable, nor to accresce to the liferent of the tacksman's assignee.

Fol. Dic. v. 2. *p.* 75; *Stair, v.* 2. *p.* 772.

*** Fountainhall reports this case:

A CHARGE to remove.—*Alleged*, She bruiked by a tack set to her husband for seven years, whereof there were years yet to run.—*Answered*, The tack was

No 79.

only set to himself, without heirs or assignees, and so he being dead, it was only personal and expired.—*Replied*, They had continued in possession since his death, and had paid mail and duty, which explains sufficiently the meaning of parties.—*Duplied*, This possession was no homologation of the tack, it being not by virtue of the tack, but mere tolerance and tacit relocation; and the accepting mail and duty hath been found no homologation where the tack was null. THE LORDS found the tack expired, and decerned the defenders to remove.

Fountainhall, MS.

1687. *March.* SIR JAMES ROCHEAD *against* JOHN MOODIE.

No 70.
A tack let for 19 years to a man and his wife, and their heirs, secluding assignees, may be subset, an exclusion of assignees being no exclusion of subtacksmen.

THE Laird of Innerleith having set a tack for 19 years to James Halyburton and his wife, and to their heirs male or female, secluding assignees, except that James did assign to some of his bairns; and after James and wife's decease, their son and heir, who succeeded to the right of the tack, having granted a sub-tack to his sister's husband, the heritor raised a process for declaring the tack void as being assigned, contrary to the provision therein, not to assign.

Answered, The tack was assignable to James Halyburton's bairns, and the defender's wife is a bairn; 2*do*, The defender hath not an assignation but a sub-tack, whereby the master hath no prejudice, seeing the taeksman continues also liable to him for the rent.

Replied, The power of assigning to bairns is only conceived in favours of James the father, and not in favours of his heirs; and here the assignation is made by the heir; 2*do*, Though a tack granted to one and his heirs, with a power to out-put and in-put tenants, or without seclusion of assignees, might be assigned, yet such a thing cannot be allowed of here, except bairns *ut supra*, are expressly excluded. And to grant sub-tacks is *fraudem facere legi*, seeing oft times *industria personæ*, and the good humour of the tacksman, is considered.

Duplied, The clause allowing the father to assign is not taxative, and the heir is *eadem persona*; and the daughter's husband is the same with herself, seeing a tack in her favours would fall under her husband's *jus mariti*.

THE LORDS found, That the clause secluding assignees did not hinder to grant sub-tacks; which was thereafter adhered to.

Fol. Dic. v. 2. *p.* 76. *Harcarse*, (TACKS and RENTALS.) *No* 955. *p.* 268.

*** It is mentioned here by Harcarse, that in the month preceding, a similar decision had been given in the case of Madder of Langton against Lord Tarras.