

No. 160. he had actually entered, and owned the tack by possession ; which certainly he had done, if he had not been excluded by the adjudication, for sums exceeding the value of the tack. *3to*, There is no interest of the Archbishop designed by that clause, for, after the two heirs-male, there are three nineteen years to their heirs and assignees whatsoever ; so that the adjection of assignees in the last part of the clause, according to the ordinary style, relates to the whole clause, and so to the assignees of the two first heirs-male. *4to*, Though it could be constructed that their assignees could be secluded, yea, though they were expressly excluded, yet apprisings or adjudications do unquestionably carry such rights where assignees are excluded, as reversions expressly secluding assignees are carried thereby, and even personal faculties. It was replied, That the word " entering," must have some import, and it can be no other than that the two heirs-male should own the tack, and enter in possession, which was found in the process of the Duke of Lauderdale against the Earl of Tweddale, No. 31. p. 6472. for the teinds of Pinkie. It was duplied, That though that allegiance was mentioned in the debate, yet there is no interlocutor thereupon, but the decision annulling Tweddale's tack, is expressly upon other grounds.

The Lords found the adjudication carried the right of this tack, and that this point was not decided *pro* or *con*. in the Duke of Lauderdale's process.

*Stair, v. 2. p. 798.*

\* \* \* Fountainhall reports this case :

In this cause the practise between the Duke of Lauderdale against the Earl of Tweddale was cited, done in 1678, whereby a tack set to Rankeillor of the lands of Pinkie, and of his heirs succeeding to him, was found not to belong to Tweddale, because he was only a singular successor, and not an heir ; but Sir John Dalrymple denied it was decided on that point, but on a different head ; viz. That Tweddale could not found on Rankeillor's tack, because it was past from by taking a posterior tack from Queen Anne. The Lords found the adjudication transmitted the right of this tack ; but there were three of them demurred thereon :— If the apparent heir nearest *in sanguine* had got the right of this tack, *per exceptionem hereditatis*, by a disposition from his father, (as is usual to do in their son's contract of marriage) many thought that would have carried it too, seeing it is only done to shun the expense of a service.

*Fountainhall MS.*

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1685. *December.* THOMAS FRASER *against* ANDREW DUNCAN.

No. 161.

In a process of removing against a tacksman and sub-tacksman, where the tacksman was only warned,

It was alleged for the sub-tacksman : That he ought also to have been warned, since his being in the natural possession was known to the master.

The Lords repelled the defence.

*Harcarse, No. 954. p. 268.*