

*Answered*; That this was precisely the argument insisted on to save from the irritancy of the tack, which was repelled; and the error lay in not adverting to the several capacities of Sir Alexander, for that his consent, as one of the lessees, could not preclude him from insisting as heritor of the mines.

At advising, the case was compared to a tack of land, and it was said, that though a landlord, consenting to a subtack, would retain the first tenant bound for the rent, yet he could not make him liable for any damages arising from the unskilful labouring of the subtenant.

THE LORDS found it not competent to the Creditors of Sir Alexander and Mr Charles Murray to insist for damages against the petitioners, in respect of Sir Alexander Murray's consent, as one of the principal lessees, to the sub-lease made by them to the York Buildings Company, by whom the damage in question was done.

Act. Lockhart.

Alt. R. Craigie.

Clerk, Gibson.

D. Falconer, v. I. No 84. p. 137.

1746. July 9.

OF JANET YOUNG against The REPRESENTATIVES OF CHARLES FALL.

RICHARD INGLIS, mariner, wrote from London to Janet Young, his mother, at Dunbar, that he intended to remit to her six guineas, if he knew of a proper method to do it; and she having thereupon advised with Charles Fall, merchant in Dunbar, Inglis, upon that advice, paid the money to Claud Johnston, Mr Fall's correspondent, either upon his draught on Mr Fall, payable to Janet Young, or upon a receipt.

Janet Young coming to demand the money, was told that she was debtor to Mr Fall and Company for house rents by decret, which behoved to compensate her claim.

Some objections were made to the decret; but the point on which the Lords determined the cause was, that Mr Fall having advised the remitting the money this way, which was acknowledged by a petition in process, and which money was intended by the son for his mother's support, he was *in mala fide* to oppose the compensation.

THE LORDS repelled the defence.

Reporter, Drummore.

Act. H. Home.

Alt. Hay.

Clerk, Gibson.

D. Falconer, v. I. No 129, p. 155.

No 31.

A merchant having advised the manner of remitting a small sum, designed for the subsistence of an indigent woman by her son, it was found he could not arrest it on any debt due by her to himself.