No. 13. assignee over a subsequent acquirer of the subject, whose titles are legally completed.

The Court refused the petition, without answers.

Observed on the Bench: There have been many questions as to the mode of completing an assignation to a lease. But there can be none more effectual than possession; see 6th June 1794, Hardie Douglas. No. 46. p. 2802. Here there is all the possession that the case admits of,—the possession of the subrents, which implielso intimation to the subtenants.

Lord Ordinary, *Glenlee.* For Petitioner, *Jeffrey.* Agent, *Arch. Dunbar*, W. S.
Clerk, *Home.*

F. *Fac. Coll. No.* 247. *p* 554.

1806. *December* 5. EARL of CASSILLIS, *against* MACADAM and Others.

No, 14.
Tack for twenty-one years does not imply a power to subset.

THE Earl of Cassillis granted a lease of the farm of Turnberry to Quintin Macadam and his heirs for twenty-one years. It was totally silent as to the powers of the tenant to subset. Upon the death of Macadam, his brother succeeded to this lease, and granted a sublease to John Dunlop at an advanced rent. Upon this the Earl instituted an action before the Court of Session, to have it found and declared, that this lease did not confer upon the tenant any right to assign or subset, and, therefore, concluding, that the assignee or subtenant should be removed from the farm.

The Lord Ordinary, after ascertaining the facts in a condescendence and answers, took the cause to report upon memorials, when the pursuers

Pleaded: In all leases of land, a *delectus personæ* is implied. Consequently, tacks which are not expressly granted to assignees, are held to be personal to the tenant, unless the term of endurance exceed the ordinary period of human life. Erskine, B. 2. Tit. 6. § 31; Dirleton, *voce* Tacks, p. 196; Stair, B. 2. Tit. 9. § 22.; Bankton, B. 2. Tit. 9. § 11. It has been fixed, that a lease for nineteen years does not empower the tenant to subset; Allison, January 22, 1788, No. 170. p. 15290; Earl of Peterborough, March 8, 1791, No. 171. p. 15293; and as the lease in question is granted only for twenty-one years, which is a term of endurance not uncommon in that part of the country. there is no reason for holding that any extraordinary powers were understood to be conferred upon the tenant.

Answered:—It is a general rule of law, that every right competent to a party may be assigned by him at pleasure, unless there be some express limitation in the nature of the right. In leases of short endurance, indeed, there has been introduced an exception to this rule; but wherever the period of the lease exceeds nineteen years, by which the tenant is placed in a state of considerable independence, the rule of common law prevails, and the tenant is al-

No. 14.

lowed to alienate his tack like any other patrimonial right which he may acquire; Craig, L. 3. D. 3. § 24.; Bankton, B. 2. Tit. 9. § 46. Where a lease descends to heirs, it is impossible to hold that a *delectus personæ* can be inferred. And as it is admitted, that in long leases a power to subset is implied, the only rule for ascertaining what is a long lease, must be, to hold, that every lease exceeding the ordinary endurance of nineteen years, comes under that description.

The Lords repelled the defences, and decerned in the removing against Dunlop.

There was, however, considerable difference of opinion on the Bench. It was *observed*, That the principle of *delectus personæ* in a tenant was more adapted to the early state of society, when the tenants were understood to be the followers and retainers of their landlord than at present, when the lands are let to opulent men at a high rent, and where leases descend to the heirs of the tenant; and further, that it was highly expedient to ascertain, by some definite rule, what was understood by a long lease, in which a power to subset was implied; and the only rule which suggested itself on this point, was, that every lease for a period longer than nineteen years, which hitherto has been the most useful term, was to be considered as a long lease. Reference was made to the case of Trotter against Dennis, November 22, 1770. No. 166. p. 15282.

A reclaiming petition was presented against this interlocutor, but no judgment was given upon it, the cause having been taken out of Court by the arrangement of the parties.

Lord Ordinary, *Medowbank*. Act. *Cathcart*. Agent, *Jo. Hunter*, W. S.
Alt. *Forsyth*. Agent, *Arch. Crawfuird*, W. S. Clerk, *Scott*.

J. *Fac. Coll. No.* 262. *p.* 584.

1808. *February* 16.

DENNISTON, MACNAYR, and COMPANY, *against* DUNCAN MACFARLANE.

No. 15.
A purchaser of a tack for nineteen times nineteen years from the tenant, cannot demand production of the landlord's title.

ON the 7th October 1776, James Donald gave a lease 'to Murdoch Gillies, 'and Company, their heirs, executors, assignees, and subtenants whomsoever, 'of these lands, houses, and yards in Upper Miltoun, for the space of nineteen 'times nineteen years.'

The company then consisted of Mr. Cunningham of Lainshaw, Peter Murdoch, James Gordon, and Robert Dunmore.

In 1787, Mr. Cunningham retired from the concern, and sold his share of the company property to the other partners.

They, in March 1778, assumed two new partners, Neil Jameson and James Macdowal; and they disponed the above-mentioned tack to themselves and

A tack may be validly