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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.

A tack may be validly

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

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granted to a company *socio nomine.*

A disposition and infeftment 'to A. B. and the other partners of a company,' found to be a valid investiture to A. B.

these new partners *nominatim*, 'and to the survivors of them, the said whole 'partners, for themselves, and in trust for behoof of those who may happen to 'be partners of this company for the time, according to their respective shares, 'rights, and interests in the stock of the company.'

On the 26th August 1791, Anne, Mary, and Margaret Lang, as fiars, and Margaret Aitken, as liferentrix, disponed 'to and in favours of John Gillies, 'manager, and one of the partners of the Dalnotter iron-works belonging to 'Messrs Murdoch, Gordon, Gillies, and Company, and the other partners of 'the foresaid Company, according to the respective rights and interests in the 'stocks of the said company, and to the disponees of the said partners or ma-'jority of them, and the heirs and assignees of such disponees,' the lands of Easter Milntown and Shearer Brae. On this disposition infeftment was taken, and a charter of confirmation was granted by the superior, both in the same terms as the disposition.

By disposition of date the 28th November 1800, and subsequent dates, James M'Dowal, James Gordon, and John Gillies, surviving and remaining partners of Murdoch, Gillies, and Company, with the consent of the trustees upon the estates of the other partners, conveyed the subjects contained in the above lease and disposition to Robert Dennistoun, Richard Dennistoun, Robert Macnair, James Macnair, and Walter Tassie, copartners of the company of Dennistoun, Macnair, and Tassie.

Walter Tassie, for himself and the other partners, sold the lease and property of these subjects to Duncan Macfarlane, writer in Glasgow, who bound himself to pay the price, 'on receiving a proper and sufficient title to the pre-'mises with a sufficient progress of writs.'

A disposition in implement of this minute was offered to Macfarlane; but he objected to the sufficiency of the progress, and refused to accept of it or pay the price.

An action to compel him to accept the disposition, and to pay the price, was raised against him in the names of the partners of Dennistoun and Company. In defence, he stated a variety of objections to the titles offered him.

The Lord Ordinary reported the cause on memorials.

On advising these, the Court 'Repelled the defences hitherto stated, and 'remitted to the Ordinary to proceed accordingly.'

The defender reclaimed; and his petition was followed by answers. In his reclaiming petition, he stated a variety of objections, but it does not appear necessary to report more than the following.

Argument for the defender.

I. As to the lease.

First, No title in the person of the granter of this lease has been produced to the defender. But without such production, there can be no secure title to

the lease itself; and as this lease is for so long a period that it is equivalent to a feu, the purchaser of it has a right to demand a complete progress.

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Secondly, The lease was granted to the Company of Murdoch, &c. *socio nomine*. But a lease is a real right in lands, which cannot be held by a mere political person. It should have been vested in some real person in trust for the company. It cannot be said that it was vested in the partners, for it is fixed law that the right of a partner in a company is merely personal not real.

II. As to the property.

The disposition from the Langs, and infeftment on it, is quite inept, for it is given 'to John Gillies and the other partners of the Company,' a form of disposition and infeftment which is quite unknown in our law. All grants of feudal rights must be to particular persons named and designed; Craig, Lib. 2. Dieg. 2. § 23; Erskine, B. 3. Tit. 2. § 6. This is essential to the whole system of feudal titles, and particularly to the recording of these titles,—and accordingly it has been decided to be the law in the cases, Blackwood against the Earl of Sutherland, 7th November 1740, No. 22. p. 14327. and Melville against the creditors of Smeiton, 14th February 1794, No. 23. p. 14327. It is vain to say that the disponees are named by reference to the contract of copartnery, for that contract is not expressly referred to; and, at any rate, it forms no part whatever of the feudal title, nor ever could be recorded as such.

Nor can it be said, that the disposition is to John Gillies in trust for the rest. It is not so given, but to him directly, and to the other partners directly; nor is it given to him *in toto*, but for his share in the Company stock, and to the other for their share in that stock.

Argument for pursuers.

I. *As to the lease.—First*, In all questions about leases, it is to be presumed that the granter of a lease had a sufficient title in his person if nothing appears to the contrary. The tenant has no right to call for production of the titles of his landlord, merely that he may be more sure his lease is good. Nor can a purchaser of the lease demand of him a production which it is not in his power to obtain. Sir A. Edmonstoune, the heritor, will not give production of his titles to the pursuer, and is not bound to do it, therefore the pursuer cannot be bound to give it to the defender.

Secondly, There never was supposed to be an objection in our practice to a lease granted to a company *socio nomine*. It is quite a common form. There is no formal authentication, or record of leases; so that even if it was necessary to name the lessees individually, that is sufficiently done by reference to the contract of copartnery, which is a depth as public as the lease itself.

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II. *As to the property.*

Though it would have been more regular to have named all the disponees in the disposition, yet this was not essential. It may be done by reference; and there was here, by implication, a sufficient reference to the contract of copartnery, which was registered in the books of Council and Session before the date of the disposition. But, *Secondly*, If the other partners of the Company were not effectually invested by this disposition, at least the disponers were wholly divested, and therefore the full right has passed into Gillies, who was named and designed. Whether he was made a trustee or not, is of no consequence. If he was invested, the title offered to the defender is sufficient; and if no right passed to the other disponees, he must have been fully invested.

The Court thought that there was nothing in the objections to the lease.

And that the second answer to the objection to the disposition was sufficient, especially as all parties interested in the subject were ready to concur in the disposition; and accordingly 'Adhered to the interlocutor reclaimed against.'

Lord Ordinary, *Polkemmet.* Act. *Connell.* Alt. *Fletcher.*
Agents, *David Wemyss*, W. S. and *John Dillon.* *Pringle*, Clerk.

M. *Fac. Coll. No.* 31. *p.* 109.

1808. *February* 19. JOHN FORRESTER *against* JAMES WRIGHT.

No. 16.
An outgoing tenant being bound to consume the whole fodder on the lands, and lay the whole dung thereon the last year of his tack, having withheld part of it from the lands at the last crop, is obliged, without payment, to leave to the incoming tenant the quantity so withheld. To that part of the dung made after

THE defender held a lease under Mr. Hogg of Newliston, wherein he was, *inter alia*, 'bound to eat and consume the whole straw growing on the said 'lands with his bestial, and lay the whole dung thereon the last year of the 'tack, at bear seed time.' When this lease was on the point of expiring, the pursuer acquired a lease of the lands.

The defender having failed to apply, in terms of his lease, the dung made at the bear seed time of 1806, the pursuer petitioned the Sheriff to find, 'That 'the said James Wright has forfeited all right to the said dung, in and through 'his having not laid the same upon the lands at last bear seed time, in terms 'of his tack, and that the said dung is the property of the petitioner.'

On this application, the Sheriff pronounced the following interlocutor, (20th March 1807.)

'Finds that the latter part of the clause in the defender's tack, relative to 'the straw and dung of the farm, imports a limitation in the tenant's favour, 'as to his penult crop, of the obligation set down in the former part of 'said clause, and applicable to the fodder and dung of all former years; and 'that, in terms of the same, he was only obliged to lay upon the lands, at bear 'seed time of the last year of his tack, such dung made from the fodder of 'crop 1805, or otherwise, as was then ready, or, in course of fair and equi-