he will, no doubt, also insist for a sight of the charter. It was found, notwithstanding, That this general reference was not sufficient against creditors or singular successors. No 113.

Fol. Dic. v. 2. p. 70.

1737. *July* 26. CREDITORS of SMITH *against* His BROTHERS and SISTERS. No 114.

A FATHER having disponed his estate to his eldest son, with the burden of certain sums to his younger children, which did not enter the precept of sasine nor the sasine itself upon the precept, otherwise than by a general reference; the same notwithstanding was found effectual against the son's real creditors, seeing the burden was fully engrossed in the disposition, which was the warrant of the sasine; for, though a general reference in an infeftment is not good against a singular successor, yet a charter is a part of the infeftment as much as a sasine; and a disposition, when it is the immediate warrant of the sasine, stands in place of a charter, and is considered as part of the infeftment. See No. 68. p. 10246. See APPENDIX.

Fol. Dic. v. 2. p. 71.

SECT. IX.

Rental Rights.—Tacks.

1752. *February* 29. KER *against* WAUGH. No 115.
A perpetual rental is not good against a purchaser, more than a perpetual tack.

KER of Moristoun being proprietor of the lands of Lighterwood, to which he derived right by progress from the Lord Borthwick, pursued a removing against James Waugh, from a farm of the said lands possessed by him upon a tack from the late Moristoun in 1721.

The defence was, That the defender's predecessor in 1592, obtained from the Lord Borthwick a rental-right of the husband-land, from which the defender his heir was now sought to be removed, and whereby he was declared to be kindly tenant for ever. That when in 1721 the defender came to take a tack of some lands adjacent thereto, the husband-land contained in the rental-right was *per incuriam* thrown in, but by which he could not be understood to have renounced the rental-right; and though there was some difference of the rent

No 115. in the tack, from what it had been in the rental, that was only occasioned by converting the grain payable by the rental into money.

When this case came before the Lords by a petition for the defender, against an interlocutor of the Ordinary upon specialities, the LORDS took it up singly upon the general point, How far the rental-right was good against a singular successor? And they were of opinion, that it was not. Rentals differ in this from tacks, that tacks are null, if they have not an ish, whereas rentals may be granted to endure for ever, but are nevertheless only effectual against the granter and his heirs; and on account of that difference, it is, that the statute 17th Parl. 1449, declaring tacks to be effectual against singular successors, does not extend to rentals, which would have been a great incumbrance on the transmission of property. *Vide* Sir George M'Kenzie on the statute.

THE LORDS "Decerned in the removing."

How far even tacks would be effectual against singular successors, when granted for an unusual number of years has been questioned; and this very Session there was an occasion given, at least for understanding the mind of the Court upon it, which was this: The estate of Jordanhill was purchased at a judicial sale by Alexander Houstoun, merchant in Glasgow, who, having discovered after the sale, that a small bit of ground, consisting of little more than an acre, was not the property of Jordanhill, that his right to it was no other than a tack from the first Viscount of Garnock for 400 years; he set forth the case in a petition to the LORDS, and that he was willing to retain the subject, if it should be found an effectual tack, upon his being allowed a proper deduction for the difference between a tack and a right of property, or if not, to give it up upon being allowed a defalcation of the value from the price; and craved that the LORDS might afford him such remedy as to them should seem meet.

The case was stated by Lord Kames, probationer, as part of his trial, who gave it as his opinion, that a tack of such endurance was not effectual against singular successors, but that it was good against the heirs of the granter. And though there was no occasion to give judgement upon that point, of its not being effectual against singular successors, the LORDS appeared to approve of that opinion, but only found, agreeable to the reporter's opinion, that it was effectual against Garnock the heir of the granter; and remitted to an Ordinary to hear parties on what deduction might be insisted for, as it was not a right of property.

Fol. Dic. v. 4. *p.* 71. *Kilkerran*, (PERSONAL and REAL.) *No* 9. *p.* 394.

*** Lord Kames reports this case:

IN the 1592, Lord Borthwick granted a rental-right of a husband-land in Ligertwood, in favours of James Waugh and his spouse, and the heirs of the marriage; which failing, to the husband's heirs whatsomever; and his Lordship binds himself and his heirs, to warrant them and their foresaids for ever, as

kindly tenants of the said husband-land, they paying of rent, six bolls bear, two bolls family-meal, &c. with 40 merks at the entry of every heir. No 115.

In a removing of the heir of the said James Waugh by Ker of Moristoun, purchaser of the lands of Ligertwood, which was brought before the Court of Session by advocation; the LORDS found that a perpetual rental is not good against a purchaser, more than a perpetual tack.

Sel. Dec. No 8. *p.* 11.

1780. *February* 29. GORDON *against* MILNE.

No 116.

ISABEL GORDON possessing the estate of Edintore, as heiress apparent to her brother, disponed the lands to Dr Gordon, reserving her own liferent. Dr Gordon used inhibition to prevent her doing any deed to affect the lands to his prejudice. Posterior to this diligence, she let a nineteen years lease, and died before its expiration. In a reduction of this lease, urged for the tacksman, That when it was granted, the disposition in the pursuer's favour was merely a latent deed, he not having been infeft till long after. Mrs Gordon, on the contrary, being an apparent heir three years in possession, the defender's possession, acquired from her *bona fide*, must be valid: The inhibition, though it might affect all rights that touched the property of the lands, could not affect those that touched merely the possession. THE LORDS, without seeming to lay any weight on the effect of the inhibition, were of opinion, that the defender, who had derived his right from a person not infeft, was not entitled to compete with a singular successor who was infeft; and they decerned in the reduction.

Fol. Dic. v. 4. *p.* 70.

*** This case is No 65. p. 7008. *voce* INHIBITION.

1794. *December* 10. JAMES WADDEL *against* JOHN BROWN.

No 117.
The lease of an urban tenement was found equally effectual against singular successors, as a lease of lands.

DAVID MACQUATER, in 1791, by a missive, granted to John Brown, a lease of a dwelling-house and workshop in Glasgow for 17 years. Brown immediately entered into possession.

In 1792, Macquater sold these subjects to James Waddell, who, in 1793, brought an action of removing against Brown, in which he stated, that he had not been informed of the existence of the lease at the time of the purchase, and in point of law.

Pleaded: A lease is at common law a mere personal right; Bankton, b. 2. tit 9. § 1. The statute 1449. c. 17. has indeed made leases of "lands" effectual against singular successor, but neither the letter nor the spirit of that sta-