No. 17. session of the teinds upon the tack, the right to the tack was fully established in him without a service."

Though it was said by the Lords, who were not clear about this point, that as this judgment, which supposed the heir's power to convey without service was new, it must as a consequence introduce this farther novelty, that a tack should be *in hæreditate jacente* of the apparent heir, and affectable by his creditors.

Fol. Dic. v. 2. *p.* 367. *Kilkerran, No.* 2. *p.* 508.

1754. *June* 26. SCOTT *against* BAIRD.

No. 18.
The heir in a lease may continue the possession of his predecessor without a service; but can he challenge without a service a conveyance of the lease made by the predecessor?

MATTHEW LOUDON, in possession of certain lands upon a lease from the proprietor to endure for three nineteen years, sold and disponed the same to James Baird *anno* 1725, and entered the assignee into possession. Above twenty years after, the conveyance to Baird was challenged by the representative of Matthew Loudon, as wanting some of the necessary solemnities. The answer was, that the heir in a lease may continue his predecessor's possession without a service; but cannot challenge without a service any conveyance made by his predecessor. The Lord Ordinary having sisted process until the pursuer should make up a title to the lease, by a general service as heir to Matthew Loudon, the matter was stated to the Court in a petition and answers. At advising, the question was put in abstract terms, in the following words: "When a tacksman is denuded of his possession before his death, whether his apparent heir is entitled without a service to remove the possessor?" It carried that a service was not necessary.

To judge of this decision, we must enquire into the reason why a service, necessary to convey heritable rights from the dead to the living, is not necessary to convey a lease, though an heritable right. An apparent heir is, with regard to all subjects, intitled to continue the possession of his ancestor. But as infeftment is not required in a lease, and that possession completes the right, the heir, by entering into possession, has a complete right, and therefore can have no use for a service. But where the ancestor himself is denuded of his lease, and is not in possession when he dies, the heir cannot otherwise claim the lease but by a service; because his privilege is only to continue the possession of his ancestor, and not to turn another out of possession who has in appearance a good title.

According to this decision it must be maintained, that the right to a lease transmits to the representative *ipso facto*, and that the rule *quod mortuus sasit vivum* holds in this case. This accordingly was maintained by the President and Drummore; who gave their opinion, that an apparent heir is liable for the rent unless he repudiate. In answer to this I observed, that the doctrine of repudiation, borrowed from the Roman law with regard to *sui hæredes*, was afterwards altered by the Romans, and that at present there is no example of it any where in Europe; that according to this doctrine, if an apparent heir should live seven years without either

repudiating or entering into possession, he and his representatives would be liable, contrary to all principles; it being with us a general rule in equity, as well as in strict law, that no heir can be burdened with the debts of his ancestor, unless in consequence of some deed of his own by which he subjects himself. No. 18.

Sel. Dec. No. 63. p. 83.

SECT. III.

General Disponee.

1718. *July.* GRANT *against* GRANT.

No. 19.

OCCURRED in a process, whether a general disposition was a sufficient title without any thing done upon it, to carry an heritable subject, such as a bond secluding executors? It was contended not to be sufficient more than a general disposition of moveables, because it is destructive to creditors, that a representative should be liable no further than *in valorem*, and at the same time no check upon him to ascertain the extent of his intromissions. Answered, Our law has gone farther to secure creditors than perhaps the law of any other country, but there is nothing of human composition absolutely free of defects. It has always been held that a general disposition is equivalent to a general service, and this must obtain, till a new law be made, whatever inconveniences it be attended with. The Lords sustained the general disposition. See APPENDIX.

Fol. Dic. v. 2. p. 368.

1784. *February* 19. ROBERT RICHARDSON *against* ARCHIBALD SHIELLS.

No. 20.
The property established by the possession of a general disponee unconfirmed; is limited to the subjects possessed.

ALEXANDER ORR had become bound to dispone certain lands, but died before fulfilling that obligation, though after a bond had been granted to him for the price. His eldest son, who was his universal disponee, possessed the lands for some years. He then obtained a sequestration, in terms of the statute 1772, of the effects belonging to himself and to his father.

Afterwards Archibald Shiells, a creditor of the father, expede a confirmation, as executor-creditor, and gave up in inventory the bond above mentioned; when a competition ensued between him and Mr. Richardson, the factor under the sequestration.

Pleaded for Mr. Richardson: It is no longer an invariable rule, that the transmission of moveable effects from the dead to the living is perfected by confirma-