

1734. *January.*SIR JOHN HOME of Manderston *against* MARGARET TAYLOR, and her Husband.

No 81.

A TACK let to a woman, secluding assignees, being reducible upon her marriage, it was found, that the letter's accepting several year's rent from the husband was no homologation to bar reduction; because, while the tenant was in possession, he could do no other than take the rent; and the accepting of it from the husband was doing no more than taking payment of what was due to him, without any intention to pass from his privilege of reduction. *See APPENDIX.*

*Fol. Dic. v. 1. p. 382.*1743. *December 14.*FORDYCE, and his Tutor-in-law, *against* The RELICT and younger CHILDREN of FORDYCE.

No 82.

A person in his testament nominated his eldest son to be his executor, appointing him to manage certain tacks, and to account for the profits to his mother. The son survived his father only a year, during which time he accounted to his mother for the rents falling due. On his death, his heir refused to account for the rents, on the ground, that his predecessor's father could not dispose the tacks by testament. The Lords found that the executor had homologated the testament, and therefore repelled his heir's defence.

GEORGE FORDYCE, some time Provost of Aberdeen, did, by his testament, nominate his eldest son and heir to be his executor, and universal intromitter, and further appointed him to manage certain leases of the estate of Marishall, which he had from the York Buildings Company, to make up accounts of his intromission with the rents of the said lands yearly during the subsistence of the tacks, and after deduction of the rent payable to the Company and charges, and of L. 200 Scots yearly for his own pains, to account for the profits to his mother, the relict, for the maintenance and education of the younger children.

After the testator's death, the said eldest son accepted the nomination of executor, confirmed the testament, entered upon the management of the leases, and settled an account with his mother of the rents that fell due the first year after his father's death, in which he debited himself with the produce of the lands, took credit for the rent and charges, &c. and for the L. 200 allowed himself for pains; and the docquet bore the balance to be paid to Mrs Fordyce for the maintenance and education of the younger children.

The eldest son dying before another year became due, leaving an infant son, the tutor refused to account for the next year till he should have a decree for his warrant; and to the process brought against him at the instance of the relict, *objected*, That the Provost could not dispose of the leases or the profits which were thence to arise after his death by testament.

And the pursuer having *replied*, upon the homologation of the defender's father the heir, by the account above-mentioned, the LORDS 'sustained the reply;' although it was argued, that a null right conveyed nothing, and that an heritable right cannot be conveyed by acts and circumstances inferring the