

of P.; and also in heritable infeftments of tailzie, the first in the infeftment, albeit he be an extraneous to the rest of the tailzie, may dispone the tailzied lands frae the rest.—The perseuer *answerit*, That albeit the father may defraud his lawful son whom he has *in sua potestate*, and that he may dispone that thing whilk he has preparit for his son, the like is not betwixt the father and his bastard son, *qui extraneus reputatur intuitu patris naturalis: Igitur*, as to the similitude of the heritable infeftments of tailzie, cannot be drawn to this present question of liferent tacks, for he that is seased heritable may freely dispone, be the practic; albeit it is otherwise be the law, either civil or municipal; but he that has right for his ain lifetime, is more like to ane wha has his right for certain years, as five, six, seven, or nine years tacks, whereof the havers may not make langer right, nor can endure langer nor the said years be past.—THE LORDS fand the reply verie good, and in respect repellit the defender's exception, and ordainit the assedation to be delivered the perseuer, *cum effectu et omni causa quod inde sequi potuit. See REMOVING.*

*Fol. Dic. v. I. p. 300. Colvil, MS. p. 231.*

1627. June 22. LIDDERDALE of St Mary's Isle against ———.

IN an action of spuilzie at the instance of L. Isle against some defenders, a tack being set of the teinds therein contained, to the pursuer's father, and to the pursuer his son, and to the longest liver of them two, and their heirs; the LORDS found, That the tack being of the tenor foresaid, the father and the son were conjunct and equal tacksmen, and that the benefit of the teinds therein contained should divide equally betwixt them, so long as they lived together; and after the decease of any of them, the whole right thereof pertained to the survivor, being set to the father, and to the son, and to the longest liver of them two, and their heirs, as said is; and therefore, because this pursuit was moved at the son's instance, for certain years owing before the decease of the father, which the son acclaimed, as appertaining to him; the LORDS found, That he had only right to the half of the saids teinds of the years wherein his father lived; and that his father had right to the other half, and consequently, that the same pertained to his executors; and found that the father, all the years wherein he survived, had not right by virtue of the foresaid tack, to the said whole teinds, but to the half allenary, he being conjunct tacksmen, in respect of the tenor of the tack, and that after the decease of the father, the benefit of the whole tack pertained to the son pursuer.

Act. *Lawrie.*

Alt. ———.

Clerk, *Gibson.*

*Fol. Dic. v. I. p. 300. Durie, p. 298.*

No 38.

No 39.

A tack of teinds was set to a father and his son, and longest liver of them and their heirs. They were found to be conjunct tacksmen, and that the profits divided betwixt them during their joint lives, and after the death of the one, that the whole belonged to the survivor.