

lessee's domestic arrangements, which there is surely the best chance of his regulating in the way most for the advantage of the estate. No. 174.

The rest of the Court were, however, of an opposite opinion. It was observed, that the term "heirs" is flexible only when it occurs in the destination of accessory rights: That tenants have it always in their power to remedy the evil complained of, by taking the lease to a certain destination of heirs, or with power to convey it to any member of their family. But as no such power occurred in this case, and as the pursuer could not take the lease except by a deed of the tenant, he was of course an assignee, and in express terms excluded.

The Lords "altered the interlocutor of the Lord Ordinary, and assoilzied the defenders."

Lord Ordinary, *Meadowbank.*

Act. *Cha. Hay.*

Alt. *Solicitor-General Blair, Geo. Fergusson.*

Clerk, *Stnclair.*

R. D.

*Fac. Coll. No. 90. p. 208.*

1801. December 8. HAY and WOOD, Petitioners.

The late John Marquis of Tweeddale (12th December, 1755,) let the lands of Sheriffside to David Hay, and his heirs, secluding assignees. In this farm, he was succeeded by his eldest son, John; who (26th December, 1799,) assigned the lease to James Hay, his natural son, failing heirs lawfully procreated of his own body. He died a few days afterwards, without other children. Nicholas Hay, the daughter of the original tacksmen, and Andrew Wood, his great-grandchild, expedite a service as heirs general to him, and raised a summons of reduction against James Hay, the assignee of the lease, in as much as assignees are expressly secluded, and as they, as heirs-at-law, are entitled to enter into possession.

No. 175.

A clause excluding assignees pleadable only by the landlord.

The cause came before Lord Armadale, who (24th June, 1801,) found, "That the clause secluding assignees contained in the tack entered into between the now deceased John Marquis of Tweeddale and the also deceased David Hay, was a clause entirely in favour of the said deceased Marquis, the proprietor of the subjects contained in the tack; and as the heir and representative of the Marquis does not concur with the pursuers in the present action, finds, That the pursuers are not entitled to found on the clause."

The Court were quite agreed, that it was *jus tertii* in the heirs of the tenant to challenge the assignation; that this right was altogether personal to the landlord; and refused the petition reclaiming against the Lord Ordinary's judgment, without answers.

Lord Ordinary, *Armadale.*  
Clerk, *Home.*

For the Petitioners, *Baird.*

Agent, *Ja. Marshall, W. S.*

*Fac. Coll. No. 91. p. 22.*