the right as a lease: However much a determinate ish might formerly have been thought requisite, that nicety was now departed from; and if an ish, as in the case of Belladrum, was postponed till upwards of 1100 years, it might, on the same principle, be extended to as many thousands. Besides, as the tack was granted with a limitation to the tenant and his heirs, it might be considered as containing an ish, viz. when the family was at an end. Some of the Judges thought, that the difficulty suggested, as to there being no proper tenant duly and equally bound with the master, was of no importance; there was nothing inconsistent in the tenant having the privilege of a breach, though the master had none: And here the tenant's privilege of liberation was not absolute; he could only take advantage of it at the end of every nineteen years; so that during the currency of each of these he was strictly bound as a tenant. Though upon these different points the Judge in some degree differed, they were almost unanimously of opinion, that the strong homologation and acknowledgment of the right, in this case, for 99 years, removed every difficulty, and barred even the pursuer and his authors, as singular successors, from bringing it now under challenge. No. 66.

The judgment was kept in general terms; sustaining the defences proponed for the defender, and assoilzieing from the reduction: And to this judgment the Lords adhered, by refusing a reclaiming petition without answers.

Affirmed upon appeal.

Lord Ordinary, *Pitfour.* For Scott, *J. Scott, Rae.*
Clerk, *Pringle.* For Straiton, *Wight.*

R. H. *Fac. Coll. No.* 74. *p.* 227.

1803. *July* 2. JOHNSTON'S TRUSTEES, Petitioners.

No. 67.
A tenant possessing on a lease during all the days of the granter's life, must after his death be legally warned to remove.

Thomas Johnston of Templehall let to his eldest son Patrick, from Whitsunday 1786, during all the days of the granter's life, the lands of Templehall, at the yearly rent of £.200.

Of this date, (21st October, 1799), he executed a trust-deed and settlement in favour of his two younger sons, and another gentleman, as trustees, conveying to them the whole of his property, to the exclusion of Patrick, the heir-at-law.

Thomas died on 30th March, 1803. The Trustees entered into possession, and raised an action of removing against Patrick before the Sheriff of Berwickshire, which was executed on the 4th of April. The trustees were infeft on the trust-disposition on the 5th.

To this action Patrick objected, that the summons was incompetent, as the Trustees had no power to raise any action till they were infeft; and that he had not received the legal warning, as the summons should not only be executed, but should also be called in Court forty days before Whitsunday.

The Sheriff sustained these defences, (21st May, 1803.)

No. 67. This judgment was submitted to review in a bill of advocation, which was refused (June 18). The Trustees petitioned the Court; and

Pleaded: This in fact is a liferent lease, terminating the moment the granter dies. Where the lease is for the tenant's life, there is no necessity for an action of removing against his representatives who may be ejected between terms; Gordon against Michie, No. 90. p. 13851. *voce* REMOVING; Stewart against Grimmond, No. 91. p. 13853. IBIDEM. There seems no difference between these two cases of a liferent-lease, as the right in the one case is just as much determined by the death of the landlord, as in the other by the death of the tenant; and there does not seem to be any sound distinction, whether a party agrees that his right shall be determined by his own life, or by the life of any other person which he may substitute in the room of his own.

The tenant having limited his lease to the lifetime of the landlord, is exactly in the same situation as the tenant of a life-renter, such as widows kenned to their terce, husbands enjoying the courtesy, clergymen in their glebe lands, or an heir of entail prohibited from granting leases beyond his own possession of the estate; The act 1491, C. 26. provides, that the tenant in terce lands or conjunct infeftments, when one of the proprietors shall decease, "shall remain unput forth or removed quhile the next term of Whitsunday following;" introducing this indulgence in their favour, instead of removing them immediately upon the death of the person fromwhom they derive right; Craig. L. 2. D. 9. § 13.; Ersk.B. 2. Tit. 6. § 49.; Lady Kincaid, No. 59. p. 13821. *voce* REMOVING. It is enough to give notice before Whitsunday that he is to remove; and the legal warning is not requisite, as the statute introduces no other indulgence in favour of such tenants, except that they cannot be removed before that term.

If it be necessary to give warning in terms of the act of sederunt 1756, it will happen, that whenever the landlord does not die previous to 29th March, the tenant whose lease expires at that period would retain two years possession, and reap two crops; for if the warning executed forty-one days before Whitsunday be insufficient, and if it be necessary to execute a new one before Whitsunday of the following next year, the tenant will not only be entitled to the crop of this year, both grain and pasture, but also to the crop to the next, as his outgoing crop, notwithstanding every exertion to remove him.

The Court did not consider this as a lease granted by a life-renter, since Thomas Johnston was in possession of the property in fee-simple, from whom the Trustees derived right; and none of them being heir-at-law till infeft, they had no sufficient title to raise the present action. But, upon the general point in all cases of tacks, granted "during all the days of the life of the landlord," it was held to be clearly understood, that the tenant was in no different situation from one possessing from year to year, or for a precise number of years specified, when tacit relocation takes place, unless he is duly warned in terms of the act of sederunt 1756 to remove. In these cases, having a title of possession, they continue to possess till

their right is legally put an end to; whereas the representatives of a liferent tenant never have any right to enter into possession. They can derive it only through the tenant, whose right is declared to terminate with his life. They may therefore be ummarily ejected as vitious possessors. In the same way, if a liferent tenant was permitted to subset any part of his farm, as the subtenant has a valid title of possession, he cannot be ejected summarily on the death of the tenant, through whom he derives right, but must be duly warned, as if the tenant's right did not determine at his death. The Court had formerly decided the similar case of Udny of Udny against Brown, 1st December 1802, (not reported, see APPENDIX), on these principles; and they therefore refused the petition without answers. No. 67.

Lord Ordinary, *Polkemmet.* Act. *Cathcart, George Jos. Bell.*
Agent, *R. Strachan. W. S.*

F. *Fac. Coll. No.* 171. *p.* 261.

SECT. IV.

In what Cases good against Singular Successors?

1553. *July* 13. LAIRD of B. *against* A POOR BOY.

Whoever has paid grassum to his Laird for certain years, five or three, long or short, conform to the use of the lands, where the grassum is paid, in case the man die before the ish of the tacks permitted for the grassum, his bairns shall bruik the rest of the years that are to run, albeit there be no tacks in write, as was practised betwixt the L. of B. and ane poor boy. No. 68.

Maitland MS. L. Hailes's Copy, fol. 44.

1602. *January* 5. LAIRD of DRUM *against* JAMIESON.

No. 69.
A party obtained a tack of teinds, and a second to commence at the expiry of the first, and a third to begin at the

The Laird of Drum, as heritable proprietor of certain lands of the living of Fodderat, warned one Jamieson, occupier thereof, to remove. It was excepted, that the defender had tack of the said lands of one George Gordon, who had a nineteen years tack of the said lands set to him by the Laird of Fodderat, author to the pursuer, being before the pursuer's right; likeas, the said Gordon had another nineteen years tack to begin after the expiring of the first, and a third nineteen years tack to begin at the issue of the former; and all the said tacks were set