

1778. *February* . The COUNTESS of GALLOWAY *against* MACKENZIES.

IN the same way, and upon the same principles, the Lords refused to sustain a tack set by the late Earl of Galloway of part of his lady's locality lands. The same being set ten years before the expiry of the old tack, upon a grassum paid of twenty guineas as was alleged, and a small rise of rent, Lord Galloway having died before expiry of the old tack; the Lords did not think this a proper or ordinary act of administration, or such as could exclude a wife from her locality; and therefore the Sheriff having decerned the tenants to remove, the Lords, 24th July 1777, refused a bill of suspension. The tenants reclaimed chiefly upon this ground, That Lady Galloway had homologated the tack by being present at the communings, receiving the grassum, and other circumstances. The petition was remitted to two Ordinaries in the vacation; who, 6th August 1777, granted commission for examining Lady Galloway upon oath on certain questions, tending to show her homologation of the tack. But, in the final result, upon advising her ladyship's oath, the Lords adhered, and refused the bill of suspension.

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1778. *August* . CRAWFORD, Tenant in ORCHYARD *against* WHITEFORD of DUNDUFF.

THIS day, 13th June 1778, in arguing a cause, Whiteford of Dunduff against Crawford, the Lord Braxfield gave it as his opinion, That, in a liferent tack, on the death of the liferenter-tenant, no warning was necessary against his successor. The successor was liable to remove immediately, without warning; and both he and the other Lords were of opinion, that, where a tack is set to a tenant and his heirs for a certain space, even excluding assignees, or excluding them without consent of the master, still the tenant may assign it to his son, or heir-at-law, even without allowance of the master;\* because the tack at any rate would go to his heirs, and be possessed by him or them for a space certain. See the decision *Hepburn against Burn*, 23d February 1760. But there is reason to think, that, if a tack was granted to a tenant for a certain space,—and for his life, or the life of his heir in-possession, at the issue of that space, exclusive of a power to assign, except with consent of the master,—that, in such case,† the tenant, perhaps an old man, could assign the tack to his heir, perhaps an infant, without consent of the master; for this would be to give the tenant power to slip his own neck out, perhaps an old man, and to slip in his son, perhaps a young man, and thereby greatly lengthen out the duration of

health delayed it. The tenants had not only entered into possession, but laid out considerable sums in repairing dykes. This was held a *rei interventus*, and made the tacks good in the judgment of the House of Peers.

\* Consider the law as to ward-holdings; where the dispensation was granted to the heir-at-law, no recognition followed.

† This was the case here.