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.

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*, 23*d 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.

the tack. This was the opinion of Lord Justice-Clerk, Lord Kennet, and Lord Covington. Braxfield and Westhall thought differently.

In this case of Crawford and Whiteford, a good deal depended upon what was to be considered as a homologation by the master, of an assignation granted by the tenant to his son; and this was said to be the case of the decision *Sir G. Suttie* against *Burn*, the counterpart of the case *Hepburn* against *Burn*.

The decisions cited were, *Marquis of Tweeddale* against *Saunderson; Hepburn* against *Burn; Sir George Suttie* against *Burn*.

Upon the whole the Lords sustained the defences for the tenant, and assoilyied from the removing, 16th June 1778. They did not give any *ratio decidendi*, but seemed to go upon different grounds; some upon the ground that an assignation by a father to a son was competent, though assignees were excluded, and some on certain homologations of the assignation by the master. On a reclaiming petition they adhered without answers, but refused expenses.

1773. *August* . POLLOCK *against* CRAIG.

MR Pollock of Airtherly agreed to grant a tack of his lands of Wraes to Craig for nineteen years. The tack was duly extended by Pollock's writer, and signed by the tenant, and put into the hands of the master, where it remained for sixteen years, during which time the tenant possessed the farm, but the tack was never signed by the master. In 1769 Mr Pollock wrote a letter to the tenant, promising that what lime he should lay upon the farm he should have nine years' produce of it; or, if he should not bruik the farm so long, that it should be referred to two honest men, what he should have, for not getting said nine years' produce. And, in consequence of this letter, the tenant laid on lime, and, as he alleged, improved the farm.

In 1771, when there was yet three years to run of the original tack, the master brought a removing against the tenant before the Sheriff. The tenant founded his defence on the tack, with possession following, and left in the heritor's hand, though not signed by him. The Sheriff however decerned in the removing; but, in an advocation, the Lord Monboddo, 1771, found the tenant, in consequence of the possession following on the tack, and other acts of homologation, entitled to continue his possession during the whole nineteen years of the tack; and gave expenses. In this judgment parties acquiesced.

Afterwards, in 1773, the master brought a new removing. The tenant founded on the missive about the lime. The Sheriff decerned in the removing, "reserving action to the tenant, as accords, for what money the pursuer ought to pay him, for not getting payment of the lime he may have laid on the lands libelled."

The tenant presented a bill of advocation, which Lord Monboddo refused. The tenant reclaimed to the Lords, pleading for the nine years' produce of the lime, at least to keep possession till in this process his claim was liquidated and the money paid. But (as I think,) the Lords adhered.