

1754. *June 26.*——— *against* ———.

[Kaimes, No. 63.]

AN apparent heir, in the right of a tack granted to his predecessor, pursues a removing: the defence was an assignation granted by the defunct, upon which the assignee was then in possession, and had been so for several years before the defunct's death.

To which it was ANSWERED,—That the assignation was false and forged, and the pursuer proponed in probation; and this gave rise to the question, Whether an apparent heir, in the right of a tack whereof the defunct was not in possession at his death, could propone in probation of any right to that tack without being served heir? And that again depended upon another question, Whether the right of a tack, whereof the defunct died not in possession, vested in the heir without a service, so that he could pursue a removing. And the Lords found that it did, because it is a rule of our law that a tack goes to heirs without service; nor hath the law made any distinction whether the defunct was in possession at the time of his death or no; and it would be very extraordinary if the transmission to the heir depended upon the accident of the defunct's being in possession or no, when he died; so that if he should be turned out of possession by any act of violence before his death, his heirs would have had no right to the tack without service.

*Dissent.* Elchies, Kilkerran, Kaimes.

1754. *June 26.*——— *against* ———.

IN a question from the town of Leslie, the Lords found that the passage betwixt the kennel of the street and the houses was part of the street or highway, and that a house, the bounds whereof were the highway, could not be built so as to encroach upon this passage or road; and for the same reason the Lords gave it as their opinion that all fore-stairs built there were illegal, and their dunghills laid there were nuisances.

1754. *July 2.* LUDOVICK STRACHAN *against* CREDITORS of JAMES STRACHAN of DALHAKIE, his Father.

[Kaimes, No. 64; *Fac. Coll.* No. 109.]

THE said Ludovick was, by his father's contract of marriage, provided to 18,000 merks Scots, and the half of the conquest; and this provision is de-