

1765. December 11.

ROBERT GRAY *against* WILLIAM Earl of SUTHERLAND.

No 5.
A tenant having a lease for 19 years, or two lives; after possessing 14 years, found still to have the option, no time having been fixed for making the option.

IN 1749, William, then Earl of Sutherland, granted a tack to Alexander Gray, of the lands of Milnclaran, 'for 19 years, or the lifetime of the said Alexander Gray, and of Robert Gray, his brother, optional to the said Alexander Gray, after the term of Whitsunday next, or the first term of Whitsunday thereafter.'

Alexander Gray possessed the lands, without making his option, for 14 years, when he signified his desire of having the tack granted for the two lives.

Robert Gray, having adjudged his brother's interest, brought an action for obtaining a tack in these terms.

Pleaded for the defender: It could never be the intention of the granter of the tack, to give 19 years first, and two lives thereafter. The obligation was alternative, and, by possessing for three-fourths of the space, the tenant must be held to have made his option of the 19 years certain.

Answered: No time was limited for making the option, and it was incumbent on the proprietor to insist to have the option declared.

'THE LORDS found that the pursuer is entitled to the benefit of the option.'

Act. Burnet.

Alt. Wm M'Kenzie

G. Ferguson.

Fac. Col. No 24. p. 241.

* * In the case *Straitons against Lauriston*, 21st January 1679, p. 418. of this Dictionary, a father having granted a bond of provision to his daughters, 'to pay the sum at their ages of 15; or at their marriage; they marrying with consent of himself, and certain other persons named;' it was *pleaded* for the children, in a process for payment, against their brother, the heir, That the bond was purified by their arriving at the age of 15 years; and payable sooner, in case they had been sooner married.—THE LORDS found the clause suspensive of payment till it should appear how the children would marry.

See *Bothwell against E. of Home, Kilkerran*, (ALTERNATIVE.) p. 24. *voce* CLAUSE of this Dictionary.