

1680. *February 25.*CRAW *against* CRAW.

It was stated as a query among the Lords, if the execution of a warning to remove was null, because it did not bear a copy to be left on the ground of the lands, as the 39th act of Parliament 1555 requires, and conform whereto the constant practice of the kingdom (which is the best interpreter of laws) uses to affix a copy on a forked stick thrust in the ground. It was reasoned, That where tenants are personally warned, as here, there needed not a copy to be left, because the act runs *alternative*, either personally, or at their dwelling places, and at the ground of the lands; which two last make but one member, and are only to be used in case they be not personally warned; which first alternative being performed, there was no need to perform the other. It was *answered*, The leaving a copy on the ground was useful, for thereby the subtenants (who needs not be warned) are acquainted to remove with their masters. THE LORDS found the warning null.

Fol. Dic. v. 2. p. 336. Fountainhall, MS.

No 68.

Found in conformity with Moodie against Tenants, No 54. p. 13820.

1681. *December 12.*BETHUNE'S TENANTS *against* BETHUNE of Blebo.

WARNING is not necessary to found a process for removing a tenant who owes a year's rent, and fails to find caution; nor is it necessary upon any removing of this kind, which, in its nature, is an extraordinary remedy.

Fol. Dic. v. 2. p. 336. P. Falconer.

No 69.

* * This case is No 21. p. 7307. *voce* JURISDICTION.

1682. *March.*STROWAN *against* Marquis of ATHOLE.

THE pursuer of a reduction, containing a distinct conclusion of declarator, insisted in the declarator before the production was satisfied.

Alleged for the defender; That he having been seven years in possession, the pursuer could not insist in the declarator.

THE LORDS found, That the declarator being petitory, it might be insisted in, although it could not disturb the defender's possession, till the event of the reduction, except by a process of removing or mails and duties following on the declarator, which some thought equivalent to a reduction.

Harcarse, (REMOVING.) No 836. p. 239.

No 70.