No 74.
No warning on the act 1555 necessary in removing from a fortalice and pertinents.

1699. *July* 14. VISCOUNT of FRENDRAUGHT *against* DAME MARGERY SEATON.

I REPORTED the Viscount of Frendraught against Dame Marjory Seaton, the former Viscount's relict, for removing from the fortalice and tower, with the yards and parks. *Alleged*, 1mo, He was not infeft, and so could not remove; 2do, The execution of warning was null, because, by the 39th act 1555, a copy must be left on the ground of the lands, which was omitted here. *Answered*, to the first, He was served heir in general, which was sufficient against her who had no right to compete on, her husband never being infeft; and, as to the second, The act of Parliament concerned only tenants in landward, and not liferenters, or possessors of houses, as Sir George M'Kenzie, in his observations on that act, shews to have been decided. *Replied*, The estate of Frendraught goes not to the heir-male, but to heirs whatsomever; and they will not suffer him to remove the Lady, and desire to be heard for their interest. THE LORDS repelled the objection against the execution of warning, and found it sufficient to found a removing from a tower; but as to his interest, they ordained the ordinary to try if the estate in controversy belonged to him as heir-male, or to the heirs of line.

Fol. Dic. v. 2. *p.* 335. *Fountainhall, v.* 2. *p.* 60.

1709. *June* 24.
EUPHAN BARTOUN, Relict of John Beiglie, Stationer, *against* CHARLES DUNCAN, Jeweller in Edinburgh.

No 75.
A particular precept from a Magistrate not necessary to authorise an officer to warn persons within burgh, by chalking their doors.

IN a reduction, at the instance of Euphan Bartoun against Charles Duncan, for reducing a decreet of removing from a shop in Edinburgh, obtained by Duncan against her, upon this ground, That she was no otherwise warned, than by an officer chalking the door at his own hand, without any warrant from a Magistrate, or intimation to her; and a verbal order, at least from a Bailie, is necessary to authorise an officer to chalk doors, in order to removing, Craig de Feud. Lib. 2. Dieg. 9. p. 197. (Edition 1655). Stair Instit. Lib. 2. Tit. 9. § 40.

Answered for the defender, Personal intimation of warnings, within burgh, was never thought necessary, Craig, page 197.; and chalking the door, which bears the public officer's name, is a better intimation, than executing at the dwelling-house, by putting a copy in the lock-hole of the door. The warrant of a Bailie is not necessary to authorise an officer to chalk doors; but that burgher-solemnity is executed of course by the town-officers, by virtue of their office, upon application of heritors, and others interested.

THE LORDS repelled the reason of reduction, and found no necessity of a particular precept or order from a Magistrate, to authorise an officer to warn persons within burgh by chalking their doors, in respect, 1. The public town-

officers are in use to summon persons to the Bailie Court without a Magistrate's warrant; 2. As a precept, under the master's hand, is a sufficient ground to warn tenants to remove from land in the country, an heritor's verbal order to an officer within burgh, where a verbal order to warn sufficeth, is sufficient without the warrant of a Bailie; 3. The Magistrates of Edinburgh, in the beginning of the year, use to give a general order to their officers to chalk doors, when required by landlords; and what Craig says, may be understood of that general order.

No 75.

Fol. Dic. v. 2. p. 336. *Forbes, p.* 336.

*** Fountainhall reports this case:

1709. *June* 25.—CHARLES DUNCAN, jeweller in Edinburgh, having right to a shop in the Parliament close from one Penman, he pursues Eupham Barton, the present possessor, to remove. She *objects*, The warning is null, not bearing, that the officer had any warrant from a Bailie to do it, which Craig de Feud. page 197. *in actione de migrando*, requires as necessary, *ut officiarius urbis publicus sit Balivi mandato instructus*; and Stair, Tit. Tacks, § 40. requires the same, yet he acknowledges it is done by the symbol of chalking the doors, without giving any intimation or written copy to the party warned. *Answered*, There is neither law nor custom within burgh, requiring a personal intimation of the warning, or that the officer's execution should bear the Bailie's mandate to him, which is presumed, and is a general warrant and order to execute all such warnings, by chalking the doors, whenever they are employed, and needs no other special mandate. THE LORDS repelled the objection, and sustained the warning.

Fountainhall, v. 2. p. 507.

1711. *July* 11.

JOHN CARMICHAEL, in the Park of Douglas, *against* WILLIAM BERTRAM of Nisbet, Chamberlain to the Duke of Douglas.

No 76.
One possessing by tack from a rentaller, being summarily removed after his death, between terms, without previous warning, the removing was found unwarrantable, al-

THE Earl of Hyndford, who had a rental of the Park of Douglas from the late Marquis of Douglas, having set a tack thereof to John Carmichael, with this provision, That it should be null, in case the Earl's rental right should fall before expiring of the tack, William Bertram, the Duke's chamberlain, did, at Martinmas after the Earl's death, eject John Carmichael *via facti* betwixt terms, without previous warning, or order of law. Whereupon he raised a process of ejection and intrusion, with a conclusion of damages against William Bertram, upon this ground, That the pursuer, a tenant, or labourer of the ground, though his author's right was expired, could not be summarily removed, but behoved to be allowed to possess till the next Whitsunday, act 26. Parl. 3. Ja. 4.