

Wylie and Cuming gave in a complaint against the Bailie, clerk, and party, for that Mrs Anderson, who was only an annuitant, had no title to pursue a removing. The decret was pronounced on the same day with the summons, and the principal delivered to the officer; so that when a petition was offered next day, the clerk had no process in his hands, and no signature was made upon it; and though the ejection was advocated, yet the Bailie proceeded to determine therein after producing the advocacion.

No 89.

Answered; Mrs Anderson had an assignation to the mails and duties from her husband, who had a title to possess; but whether she had right to remove tenants or not, there was no ground for a complaint, if the Bailie thought her title good, though he might be mistaken; he pronounced a decret of removing, which in burghs behoved to be very summary, as one person not removing might throw many into confusion; and hence it was the custom of this burgh without staying for extracting, to deliver out the warrant to charge. The petition had been refused by the Bailie, either as incompetent after decret pronounced, or not moving him to change his interlocutor, and the advocacion could not be received after decret. The ejection was no action, but the execution of the removing, which the LORDS of Session grant upon a bill, and therefore it was absurd to advocate it; and to make an advocacion stop execution, would be giving it the force of a suspension.

THE LORDS, 10th July, "found there was in this case no contempt of authority." And

This day refused a bill, and adhered.

Act. Lockhart.

Alt. W. Grant.

Clerk, Kirkpatrick.

D. Falconer, v. 1. No 279. p. 373.

S E C T. V.

Holden as confessed—Confessing or denying,

1579. February 6. CUNINGHAM against LD. KERSE.

In a spuilzie the defender refusing to give his oath of calumny, and thereupon being holden as confessed, the LORDS found, That this superseded any probation by witnesses, either of the possession or spuilzie.

No 90.

Fal. Dic. v. 2. p. 184. Colvil.

** This case is No 33. p. 9375. voce OATH.