

S E C T. II.

Prorogatio de Causa in Causam.

1611. July 6.

KENNEDY, Taylor in Maybole, *against* HEW KENNEDY of Garrihorn, and Bailie-depute of Carrick, and QUINTIN TOD.

No 20.

No inferior judge in this kingdom has power to decide in actions of contravention of lawburrows in their courts, albeit they may cause parties find caution of lawburrows in their courts; and if they proceed and give process and sentence of contravention, albeit against a defender compearing, the same will be null by way of exception.

Fol. Dic. v. i. p. 493. Haddington, MS. No 2265.

1681. December 22. BETHUNE'S TENANTS *against* BETHUNE.

No 21.

IN the suspension of a decret of removing, raised by ———, tenant to Bethune of Blebo, against his said Master, of a decret of removing recovered against him before the Sheriff of Fife, for not payment of bygone rents, and finding caution in time coming; the LORDS found the decret null, as being recovered before the Sheriff, whom they found not judge competent in extraordinary removings of that nature, even albeit the defender did compear, and so, as was alleged, prorogated the jurisdiction; and also in the same process, the LORDS found, That there was no necessity of warning in extraordinary removings of this nature. See REMOVING.

Fol. Dic. v. i. p. 493. P. Falconer, No 13. p. 6.

* * * Sir P. Home reports this case :

1682. *March.*—BEATON of Blebo having obtained decret of removing against — his tenant before the Sheriff of Fife, for not payment of his bygone back-tack duty, and finding caution for payment of the same in time coming; the LORDS found that a Sheriff was not judge competent to such extraordinary removings, even albeit the defender did compear, and did not propone that defence, and so seemed to have homologated the Sheriff's jurisdiction; and therefore found the decret null; and found that there was no necessity of a warning in extraordinary removings of that nature.

Sir P. Home, MS. v. i. No 245. p. 336.