

No 125.

Though the judgment of the Court in this case went in a great measure upon the special circumstances, it was observed by very high authority from the Bench, that Lord Stair's opinion of a notification of forty days being necessary, even where a tenant was bound to remove without warning, was right, and in the abstract case should be followed.

The following judgment was pronounced, January 24. 1771, " Find the notification insufficient for removing the petitioner at Martinmas 1769 from the arable land, and at Beltan or May-day 1770 from the houses and grass ; but find it sufficient to oblige her to remove at Martinmas last, and Beltan or May-day next ; and therefore, in respect the said term of Martinmas is elapsed, decern and ordain her instantly to remove from the arable lands, and from the houses and grass at Beltan or May-day next."

Lord Ordinary, *Pitfour*,
For Fulton, *Geo. Fergusson*.

For the Earl of Eglinton, *Lockhart*,
Clerk; *Ross*.

R. H.

Fac. Cdl. No 69. p. 205.

 SECT. X.

State in which the person who removes is bound to leave the property.

1554. *December 19.* BARCLAY of Cullernie *against* BARCLAY.

No 126.

GIF ony man be chargit to deliver ony tour, fortalice, or place, he aught and sould deliver the samin, with barnis, byris, stablis, and all uther necessare housis pertenant to the samin, as pertinentis thairof.

Fol. Dic. v. 2. p. 338. Balfour, (PERTINENTS OF LANDS.) No 1. p. 175.

No 127.

The person decerned to remove, must deliver up the possession void of any occupier.

1624. *January 30.* GREENLAW *against* ADAMSON.

IN an action of suspension of a decret of removing betwixt Greenlaw and Adamson, the LORDS found, That the decret of removing was not satisfied and fulfilled by any instrument of obedience, bearing, that the party against whom

the sentence of removing was obtained, had removed himself, and his family, from the lands decerned, except that he had also really delivered to the obtainer of the sentence *vacuam possessionem*; for the party decerned, his own removing, and colluding with another, who entered to the land, at the instant title of his removing, was not effectual obedience, but elusory; neither was it necessary, that the obtainer of the sentence should be put to seek action of intrusion or succeeding in the *vice* against him who entered to the land at the removing of the other, seeing the LORDS found, That the party decerned ought to deliver the possession of the said houses, void of any occupier and possessor thereof.

No 127.

Act. *Cunningham*.Alt. *Nicolson*.Clerk, *Gibson*.*Fol. Dic. v. 2. p. 339. Durie, p. 103.*

1630. December 15. LORD YESTER against MURRAY.

My Lord Yester, by virtue of a gift of Drummelzier's liferent, warns the tenants of the west side of the Mains of Drummelzier, before Whitsunday 1629, and obtained decret in October 1630. David Murray of Halmyre alleging him to be infest in the said lands, makes warning to the said tenants before Whitsunday 1630, and, in January 1630, the said tenants remove, and David Murray enters to his possession. My Lord Yester, by virtue of the said gift of Drummelzier's liferent escheat, had been in possession, by uplifting the mails and duties of the said lands diverse years before the warning, and pursues David Murray, as succeeding in the place of James Chisholm the tenant. He defends himself by his alleged infestment and warning, and entered to the possession left void by the tenant. THE LORDS repelled the exception, by reason the tenant could not enter another man in his possession but the master, to whom he had been in use to pay duty before the warning.

No 128.

In conformity with the above.

Auchinleck, MS. p. 196.

1674. July 16. EARL of ARGYLE against M'NAUGHTON.

THE Earl of Argyle having obtained decret of removing against the Laird of M'Naughton to remove from the Forest of Kenbowie, pursues for violent profits since the warning. The defender *alleged*, Absolvitor, because that albeit violent profits be due after warning by tenants, when they violently refuse to render the possession that they have received, to their master, yet when a warning is used by one that is not in possession, albeit he obtain his right declared thereafter, or by reduction remove the defender's title, he will not ob-

No 129.

A man being decerned to remove himself, cottars, &c. was found liable in violent profits for not removing his sub-tenants.