

1629. February 6. La. BORTHWICK *against* Scot.

No 272.

The three years prescription of warnings is to be computed, not from the date of the warning, but from the succeeding Whitsunday.

THE Lady pursuing a removing upon a warning, whereupon summons of removing was not intended and executed within the space of three years after the execution of the said warning, and fell under the act of prescription 1579, and the pursuer *replying*, That albeit the summons of removing was not raised and executed within three years after the execution of the warning, yet the warning was not prescribed, seeing the summons was executed within three years after the term before which the warning to remove was made, and the act of Parliament ought so to be understood; the LORDS repelled the allegiance, and sustained the pursuit and warning as not prescribed, seeing it was found sufficient that the summons was executed before the expiring of the three years after that Whitsunday to the which the warning was indicted, albeit it was not executed before the expiring of the three years after the execution of the warning; for if warning were made almost a year before the Whitsunday to which the party was warned to remove, it were hard to count the three years of prescription, to take beginning at the time of the execution of that warning, made so long before the term; but found it ought to begin at the term as said is.

Act. *Nicolson*.

Alt. ———

Clerk, *Hay*.

Fol. Dic. v. 2. p. 119. Durie, p. 422.

. Auchinleck reports this case:

IN an action of removing pursued at the instance of the Lady Borthwick against Scott of Goudelands, it was *alleged*, That the action was prescribed, because, by the act of prescription, Ja. VI. Parl. 6. cap. 82, actions of removing ought to be pursued three years after the warning, with certification, if they fail, the warner shall never be heard thereafter to pursue the same upon that warning; and three years expired after the warning before this action was intended. To which it was *replied*, That although the action was intended after the three years were expired after the warning, yet it was intended before the expiring of the three years complete from the term of Whitsunday after the warnings. THE LORDS sustained the summons.

Auchinleck, MS. p. 162.

. Spottiswood's report of this case is No 23. p. 6423. *voce* IMPLIED DISCHARGE AND RENUNCIATION.