

SECT. IV.

Contumacy.

No 88. 1633. *November 26.* LINDSAY *against* FAIRFOUL.

A PERSON being pursued for a bloodwit, at the instance both of the procurator-fiscal, and the party wronged, and being fined only for contumacy, this fine was found to belong to the judge alone, and that he might discharge the same after sentence; for the LORDS found, That the judge might have tried the fact, although the party compeared not, and might have punished him, and appointed satisfaction to the party hurt; but no trial being taken of the fact; no censure could pass upon the party for the same, so that the pain being for contumacy only, no part thereof could belong to the complainer, who might pursue for damage and interest, notwithstanding of the foresaid sentence.

Fol. Dic. v. 2. p. 182.

1748. *July 19.* WYLIE & CUMING *against* Mrs ANDERSON.

No 89.

An advoca-
tion of a pro-
cess of re-
moving not
having been
produced till
decree was
pronounced,
ejection fol-
lowing on the
decree was
found no con-
tempt of au-
thority.

MARION MENZIES, relict of Mr William Anderson, one of the ministers of Glasgow, executed a precept of warning against John Cuming, maltman of Gorbals, to remove from a house possessed by him, which her husband had entered to the civil possession of upon an adjudication, and disposed to her an annuity forth thereof, assigning her to the mails and duties.

John Wylie, cordner in Glasgow, on the title of another adjudication, had insisted against Mr Anderson, during his life, in a process of mails and duties, and transferred it against his son, who renounced to be heir; and John Cuming, who had been Mr Anderson's tenant, and on his death entered into payment to his widow, obtained a tack from John Wylie after he was charged to remove.

Mrs Anderson insisted in an action of removing before the town-court of Glasgow, the citation being 24th May, obtained decret, and charged thereon the same day to remove within twenty-four hours, the principal warrant being delivered for that purpose without extracting. An advocaion of the removing and ejection, or other action that might be intented on the warning, was presented on the 25th, and refused to be admitted after decret pronounced; and the time of the charge being expired, Cuming was ejected upon a warrant from the Bailie.