

No 102.

In a removing there was found no process, all parties having interest not being called, viz. the defender's wife, in respect he possessed but by his *jus mariti* in her right.

1665. July 15. JOHNSTON of Scheens *against* ALEXANDER BROWN. |

JOHNSTON being pursued to remove from certain lands, it was *alleged*, no process; because all parties having interest were not called, viz. the defender's wife, in respect he possest, but by her right *jure mariti*, and she was not warned.

Which the LORDS found relevant.

Fol. Dic. v. 1. p. 140. Stair, v. 1. p. 299.

No 103.

In a process of removing, it was sustained as absolvitor to the tenants, that the liferenter, whose tenants they were, had not been warned or called, she being alive at the time of the warning, though dying before the term.

1669. June 30. AGNEW *against* TENANTS OF DRONLAW.

AGNEW having apprised the lands of Dronlaw from Mr Robert Hay, advocate, as cautioner for the Earl of Buchan, to the behoof of the Earl of Kinghorn, pursues the tenants for removing, who alleged absolvitor, because the tenants were tenants by payment of mail and duty to the liferenter, Mr Robert Hay's mother, and she is not warned nor called. The pursuer *answered*, That the liferenter died before the term, and that he was content that the tenants should be decerned to remove but at the next term of Whitsunday.

Yet the LORDS sustained the defence, seeing the liferenter was living the time of the warning.

Fol. Dic. v. 1. p. 140. Stair, v. 1. p. 628.

1702. January 28. HALIBURTON *against* TENANTS OF CARSE.

No 104.

Found in conformity with No 98. and No 101.

JEAN HALIBURTON, relict of Thomas Menzies of Carse, being infeft in a life-rent out of these lands, upon her contract of marriage, pursues the tenants for mails and duties. Compearance is made for the tenants, who *alleged*, That they had been in use of payment of their rents to Menzies of Weem, their master, for more than seven years bygone, and so he had the right of a possessory judgment, and ought to be called to this process, and they were not obliged to answer till he were cited. *Replied*, That she is insisting against the tenants of her own lands, and was obliged to notice none but the natural possessors; and it was *jus tertii* in the tenants to found on another's right; but that party, if he pleased, might compear, and producing his interest, would be admitted to compete. *Answered*, If her husband had died in possession of the lands, she might have just cause to plead the continuance of the same; but they offered to prove, that seven years before her husband's decease, Weem was in possession, and so must necessarily be called, else heritors rights might be inverted by their tenants colluding with a third party; and in poindings of the ground, not only the possessor, but the master, debtor in the annualrent, must be cited. THE LORDS considered, that in petitory actions, as removings, it is a