

No 74.

No warning on the act 1555 necessary in removing from a fortalice and pertinents.

1699. July 14. VISCOUNT of FRENDRAUGHT *against* DAME MARGERY SEATON.

I REPORTED the Viscount of Frendraught against Dame Marjory Seaton, the former Viscount's relict, for removing from the fortalice and tower, with the yards and parks. *Alleged, imo, He was not infeft, and so could not remove; 2do, The execution of warning was null, because, by the 39th act 1555, a copy must be left on the ground of the lands, which was omitted here. Answered, to the first, He was served heir in general, which was sufficient against her who had no right to compete on, her husband never being infeft; and, as to the second, The act of Parliament concerned only tenants in landward, and not life-renters, or possessors of houses, as Sir George M'Kenzie, in his observations on that act, shews to have been decided. Replied, The estate of Frendraught goes not to the heir-male, but to heirs whatsoever; and they will not suffer him to remove the Lady, and desire to be heard for their interest. THE LORDS repelled the objection against the execution of warning, and found it sufficient to found a removing from a tower; but as to his interest, they ordained the ordinary to try if the estate in controversy belonged to him as heir-male, or to the heirs of line.*

Fol. Dic. v. 2. p. 335. Fountainhall, v. 2. p. 60.

1709: June 24.

EUPHAN BARTOUN, Relict of John Beiglie, Stationer, *against* CHARLES DUNCAN, Jeweller in Edinburgh.

No 75.

A particular precept from a Magistrate not necessary to authorise an officer to warn persons within burgh, by chalking their doors.

IN a reduction, at the instance of Euphan Bartoun against Charles Duncan, for reducing a decret of removing from a shop in Edinburgh, obtained by Duncan against her, upon this ground, That she was no otherwise warned, than by an officer chalking the door at his own hand, without any warrant from a Magistrate, or intimation to her; and a verbal order, at least from a Bailie, is necessary to authorise an officer to chalk doors, in order to removing, Craig de Feud. Lib. 2. Dieg. 9. p. 197. (Edition 1655). Stair Instit. Lib. 2. Tit. 9. § 40.

Answered for the defender, Personal intimation of warnings, within burgh, was never thought necessary, Craig, page 197.; and chalking the door, which bears the public officer's name, is a better intimation, than executing at the dwelling-house, by putting a copy in the lock-hole of the door. The warrant of a Bailie is not necessary to authorise an officer to chalk doors; but that burgher-solemnity is executed of course by the town-officers, by virtue of their office, upon application of heritors, and others interested.

THE LORDS repelled the reason of reduction, and found no necessity of a particular precept or order from a Magistrate, to authorise an officer to warn persons within burgh by chalking their doors, in respect, 1. The public town-