

No 135.

The LORD ORDINARY repelled the defence; and, on advising a reclaiming petition, with answers,

THE LORDS adhered to the interlocutor of the Lord Ordinary.

Lord Ordinary, *Kennet.* Act. *Honyman.* Alt. *Craig.* Clerk, *Campbell.*

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*Fol. Dic. v. 4. p. 226. Fac. Col. No 123. p. 202.*

## SECT. XII.

Whether Executorial of Ejection may proceed without a Charge?

No 136.

No previous charge necessary before ejection.

1675. *June 30.* LADY STAINHILL *against* Captain BURD.

CAPTAIN BURD having obtained decret of removing against the Lady Stainhill from a house in Edinburgh, before the Sheriff, the Sheriff-officer was thereupon proceeding to ejection. The Lady gave in a bill desiring suspension, and a present warrant to stop the ejection, because there was no charge given, or expired upon the decret, which ought to have been done by the act of Parliament the 16th day of November 1669, which, though it mention only poinding not to be without the expiring of a previous charge, yet *ex paritate rationis* the same should be observed in other executions, the reason though not expressed being, that parties may have that respite, either to satisfy or suspend.

THE LORDS found the act to extend only to poindings.

*Fol. Dic. v. 2. p. 339. Stair, v. 2. p. 338.*

No 137.

The executorial upon decrees of removing may proceed without a charge, or even extracting the decret.

1739. *July 13.* PRINGLE *against* The EARL of HOME.

THE Earl of Home pursued in a riot and for damages, for having ejected Gilbert Pringle upon a decret of removing, obtained before the Sheriff of Berwick, without a previous charge upon the decret of removing, and even before the decret was extracted, was assoilzied.

Our old lawyers, Balfour and Hope, seem to agree, that by the practice in their time, a charge upon the decret of removing must have preceded the precept of ejection; but as Sir George M'Kenzie observes, a charge is now necessary only upon decrees of removing pronounced by the Lords, but not upon decrees of removing before inferior courts, which also are in use to issue their precepts without putting the party to extract. How this change in the prac-

tice of removings upon inferior decrees came about, is not known, but that decrees of the Lords still require a charge is plain, for the Lords never execute their own decrees, as Sheriffs do. No 137.

*Kilkerran, (REMOVING.) No. 1. p. 480.*

Pursuer infest after warning. See QUOD AB INITIO VITIOSUM.

In what cases may removing proceed upon a summary application without process. See SUMMARY APPLICATION.

Warning may be followed out after the death of master or tenant. See DEATH.

Irritancies in tacks, whither purgeable. See IRRITANCY.

Formal warning not necessary from grass fields let from year to year; March 9th 1805, Macharg Petitioner; see APPENDIX.

See APPENDIX.