1754. *November* 22. CORMACK *against* COPLAND.

IN this case the Lords seemed to be of opinion that an extraordinary removing of a tenant, that is, a removing without warning, upon his being two terms in arrear, and unable to find caution, or upon his being unable to plough or sow the farm, so that there is hazard of its lying waste, is not competent before the sheriff; because it is, in effect, a reduction of an heritable right, which is only competent before the Court of Session: and so it was decided in two cases, one in the year 1632 and the other in the year 1681. *Dissent.* Drummore, who thought that in many cases it might be exceedingly inconvenient if the sheriffs had no such power.

In the same case, it was the opinion of the Court that if a tack was set aside as null, for not being written on stamped paper, and if after that the tenant should delay to supply this defect till the master had set the tack to another, and then should get the paper stamped, and upon that ground attempt a reduction of the decreet setting aside the tack, he could not be heard, because *res non erit integra,*—the tack being set to another, and the master not obliged to wait till the tenant should think fit to stamp his tack.

1754. *November* 28. ——— *against* ———.

[*Fac. Col.* No. 120; and Kilk. *eodem die.*]

FOUND, upon report of Lord Huntington, then Lord Probationer, that, a defender being called before the sheriff-court, and dying during the dependance of the process, his heir, living out of the shire, might be called by letters of supplement though a principal defender; but to this effect, and no other, that the process might be advocated to the Court of Session and there carried on; for they were of opinion that a principal defender could not be called by letters of supplement to the effect of the process going on before the inferior court; and yet they thought, without letters of supplement, the process could not be advocated, for want of a defender in the field.

N. B. They did not determine whether it would not be necessary to raise a summons of transference in this Court; but I apprehend it would be necessary.

1754. *November* 28. ——— *against* ———.

UPON report of the same Lord Probationer, the Lords were of opinion that a

bill whereupon decreet had been obtained, might nevertheless be conveyed by indorsation, which would give right to the bill but not to the decreet.

1754. *November* 29. COMPETITION among the CREDITORS of CAPTAIN WILSON.

[Kaimes, No. 80. 81; *Fac. Coll.* No. 133; and Kilk. 31st January 1755.]

THE said Captain Wilson, residing at London, having stopt payment upon the 15th of February 1751, was from that date found to be a bankrupt; a commission of bankruptcy issued against him; and assignees were named under that commission, who are one of the competing parties in this process. After the date of the bankruptcy, but before the assignation under the commission of bankruptcy, several arrestments were laid on by sundry of Wilson's creditors in the hands of sundry of his debtors, some of whom were Scotsmen, and residing in Scotland, such as my Lord Rothes; others were Scotsmen, but residing in Ireland, though having estates in Scotland, such as Captain Johnston; others were Irishmen, but occasionally in Scotland attending their duty in the army, such as Major Johnston; and, lastly, others were originally Scotsmen, but had neither domicile nor effects in Scotland, such as Claud Johnston, merchant in London. In all these hands arrestments were laid on by Wilson's creditors, either upon depending processes or registrations, at the market-cross, pier and shore of Leith, or else by leaving a copy at their dwelling-houses, or giving it them personally when they were in the country.

The assignees under the commission of bankruptcy claimed to be preferred to these arresters, upon three separate grounds,—1*mo*, Because *mobilia*, among which *nomina debitorum* are reckoned, *non habent situm*; that is, they are understood always to travel about with the creditor, and to be where he is, without any particular seat of their own; the consequence of which is, that they must be governed by the law of the domicile of the creditor or proprietor, where they are supposed, by a fiction of the law, to be situated; and therefore as in this case, by the law of England, the estate of the bankrupt is vested in the commissioners from the date of the bankruptcy, the arrestments, being laid on after that, are void and null. 2*do*, The arrestments in the hands of Captain Johnston and Claud Johnston are null, as being laid on in the hands of persons who had no forum in this country, they having no domicile in Scotland, though originally of that country. And, 3*tio*, All the arrestments are null, because the principal debtor, Wilson, has no forum in Scotland, having neither domicile nor effects there.

It was ANSWERED to the *first*,—That the maxim, that *mobilia non habent situm*, is only founded upon the authority of some Dutch doctors, and takes place nowhere else except among the little states of Holland, which are so much mixed and interwoven one with another; but did never take place in separate and distinct states, such as France and Holland, France and Britain, or even England and Scotland, which are as much distinct, as to their laws and jurisdictions, as any two kingdoms in Europe: that this law does not hold even with respect to