

1754. March 6. EARL OF MARCH against CHARLES DOWIE.

IN 1745, the Countess of March set the mill of Kings Crammond and certain lands to Charles Dowie for the space of one year, and his entry was at the term of Martinmas.

Dowie continued to possess for several years by tacit relocation; and after the death of the Countess, her son the Earl, in February 1753, not knowing the term of Dowie's entry, warned him to remove from his possession against Whitsunday 1753.

The Earl brought a process for removing before the Sheriff of Edinburgh; who decreed Dowie to remove from the arable land at the separation of the crop from the ground, and from the houses at Martinmas 1753.

Charles Dowie suspended and *pleaded*, That the warning was void and null, in regard he was warned to remove at a term at which he could not be obliged to remove; and therefore no decret of removing could be pronounced on such warning.

Answered for the Earl; That by the act of Parliament 1555, all warnings must be executed forty days before Whitsunday, at whatever term the tenant entered, and therefore the warning was properly executed forty days before Whitsunday; and although he was warned to remove at Whitsunday, which was not the term of his entry, yet the only consequence of that ought to be, that the removing behoved to be superseded until Martinmas 1753, which the Sheriff had done.

THE LORDS sustained the objection to the warning; but of consent found the letters orderly proceeded for the suspender's removing at Martinmas 1754.

For the Charger, *Brown.* Alt. *Jo. Grant* Clerk, *Kirkpatrick.*

B. *Fol. Dic. v. 4. p. 223. Fac. Col. No 103. p. 153.*

*** The same was found 11th February 1780, Campbell against Buchanans.

See APPENDIX.

1756. March 11. DUKE OF QUEENSBERRY against TELFER.

TELFER was tacksman of the Duke of Queensberry's lead mines at Wanlockhead. Upon expiry of the lease, the Duke obtained a decret of removing against him. Telfer did by a formal instrument give over his possession to the Duke's managers, who in his name acknowledged the acceptance thereof in terms of the lease.

No 84.

A warning found null where a tenant, whose entry was at Martinmas, was warned to remove at Whitsunday.

No 85.

Miners and labourers about lead mines may be removed from houses which

No 85.
they possess
without pay-
ing rent, on
fifteen days
premonition.

Some of the minors, who had wrought under Telfer, had themselves built houses at Wanlockhead, others had been put in possession of houses by Telfer but none of them had paid any rent. They were all permitted to remain in possession of their houses for upwards of three months after the removal of Telfer. Letters of horning were afterwards raised upon the decret of removing above mentioned, and Telfer was charged to remove himself, his subtenants, servants, cottars, dependants, &c.

Telfer preferred a suspension, and *pleaded*, That as his renunciation had been accepted, and as the miners did not possess under him, nor pay any rent to him, he could not be charged to remove them. It was also *contended* on the part of the miners, That they could not be ejected in virtue of this decret of removing obtained against Telfer. It is not the practice at Wanlockhead, or at any other mines, to turn miners out of their houses *brevi manu*. A formal warning forty days before Whitsunday is necessary, and has been frequently used. Most of the miners had themselves built the houses, and so far consider them as their own property, as to be in the practice of selling them to one another. And although they may be obliged to quit them upon being paid the expenses of building, yet they cannot be ejected summarily and without legal warning.

Pleaded for the Duke; The miners are neither cottars nor subtenants, but they are servants who pay no rent to the master, and are removeable at his will; and although some of them have, by permission, themselves built the houses in which they reside, yet upon satisfaction being made to them for their expenses they may be removed without any formal warning. At the same time the Duke agreed to pass from all personal diligence against Telfer.

It occurred to the Court, That no formal warning forty days before Whitsunday was necessary for removing the miners, who were not properly tenants paying rents, but servants or labourers. At the same time it might bear hard upon these poor people to turn them out summarily without any premonition; and therefore,

“ THE LORDS found, that there is no necessity of a legal warning to remove the miners, artificers, and labourers about the works; but that it is competent to the Duke of Queensberry, or his tacksman, to remove them upon a previous intimation of fifteen free days, made personally, or at their dwelling-places; and in case of their not obtempering the same, grant warrant to the Sheriff-depute to remove and eject them, reserving to such of the miners and others who have built or repaired their houses upon their own expenses, afterwards to insist against the proprietor or tacksman for any claim competent to them as accords.”

Alt. M. Intosh.

Alt. W. Stewart.

Clerk, Kirkpatrick.

Fac. Col. No 202. p. 300.