done in changing ward into feu. I cannot put so strong an interpretation on the words as to leave a feu-holding without a feu-duty.

KAIMES. The natural interpretation of *aliis*, is to others in the Crown's right: the contrary interpretation is straitened beyond bounds.

On the 31st January 1770, "The Lords altered, and found the feu-duty payable to the Crown."

Act. J. Dalrymple. *Alt.* H. Dundas.

Reporter, Auchinleck.

Diss. Strichen, Coalston, Pitfour, Gardenston, Auchinleck, Monboddo.

Absent. Alemore, Stonefield.

By the President's casting vote.

July , Adhered. Alemore for alter. Stonefield for adhere.

It would seem that the parties contest who should be the appellant.

Vide supra, 1*st August* and 17*th November* 1769.

1770. *February* 6. COMMISSIONERS of ANNEXED ESTATES *against* ALEXANDER M'NAB.

REMOVING.

1*st*, A Tenant's entry having taken place at Beltane,—Found that his removal must take place at the same term, and that he must be warned accordingly.

2*d*, The warning given in this case, forty days before Whitsunday 1769, being found inept, it was held that the decreet, founded on this informal warning, might be turned into a Libel, to the effect of compelling the Tenant to remove at Beltane 1770.

THE defender had entered to the houses and grass of a farm possessed by him, under the pursuer, at the term of Beltane 1745, and to the lands at the separation of the crop of that year. He was pursued, forty days before *Whitsunday* 1769, to remove at Whitsunday that year, from the houses and grass, and from the lands at the separation of the crop. Decree of removing was pronounced by the Sheriff. The defender, in a suspension, objected, That, as his entry had been at Beltane, so must his removal; and, consequently, the warning he had received was not effectual to remove him at Whitsunday 1769. The Court being of this opinion, the pursuers next insisted, that, at all events, the warning which had been given was sufficient to entitle them to remove the defender at Beltane 1770; and that, to this effect, the decree charged on should be turned into a libel.

"The Lords, (21st December 1769,) on report of the Lord Monboddo, turned the decree charged on into a libel, and decern Alexander M'Nab, defender, to remove from the lands of at Beltane next, 1770."

In a petition against this interlocutor, the defender PLEADED,—It has hither-

to been understood, that, if a tenant is erroneously warned, or summoned to remove, he is not bound to pay any regard to such warning or summons. He is under no obligation to look out for a new farm; and the law entitles him to sit still where he is, till due notification is again made to him, in terms either of the Act of Parliament 1555, or of the Act of Sederunt. An inept warning cannot be amended *ex post facto*; neither can an irregular process of removing, concluding to remove at a wrong term, be converted, while parties are in Court, into a new process with different conclusions; or, at least, if it can be at all amended, this amendment cannot be drawn back, but ought only to be sustained as a process commencing from the date of the amendment.

The law says, that a tenant is not obliged to remove from his possession unless certain legal forms are used and certain *induciæ* given. If these are not complied with, the whole procedure is null and void, and parties must begin, of new, as if nothing had happened. If it were otherwise, no defender, in a removing, would ever be assoilyied. For, though the process should be clearly irregular, or the warning absolutely null and void, no matter: if the parties are in Court, the Court may allow all errors to be rectified, and may decern in the removing, just in the same way as if it had been regular from the beginning. This is, in effect, the doctrine which the chargers plead; and it is inconsistent with every principle which has hitherto obtained in removings. If the petitioner is removed at Beltane next, upon a process commenced in August last, he does not obtain the legal *induciæ;* for he has not been summoned in this process forty days before the preceding term of Whitsunday. He is not prepared for removing at the next Beltane; for the inept process, brought against him before Whitsunday last, could not be held by him as a legal certioration. He is entitled, upon the faith of the opinion given by the Court in this very case, to say, that it was good for nothing. It was no intimation for him to remove at Beltane 1770. It was an intimation to remove at a wrong term; and, in other respects, inept and null.

It may be doubted if an inept charge to remove can be at all rectified *ex post facto;* as the statute law of the kingdom requires certain precise forms to be followed out in removing tenants from their farms. But granting, for argument's sake, that it may, still this cannot, either in law or equity, go farther than to hold the solemnities as duly performed of that date on which the due and regular notification is given. The defender referred to the case of the *Duke of Gordon* v. *M'Vicar*, in 1769.

ANSWERED FOR THE CHARGERS:—

The question is, Whether the proceedings in this process of removing have been such as to warrant a decreet of removing, to take place at Beltane, 1770? It is an undisputed fact, that the process was called forty days before Whitsunday last, which, according to the most critical rules, is forty days previous to Whitsunday before the term of removal, supposing the term to be Beltane, 1770. Consequently, it is apparent that the substantial right and security introduced in favours of tenants, both by the Act, 1555, and the Act of Sederunt, 1756, is observed, according to the interlocutor as it now stands. But it is said, the process of removing is inept, because it charged to remove at Whitsunday 1769, and, therefore, cannot be sustained as an action for

removing at Beltane 1770. There is no foundation for this objection. If it was a rule of Court, that no summons whatever could undergo the smallest variation after it was brought into Court, the petitioner's argument would be somewhat plausible; but as it is established, in the form of proceeding, that summonses are daily varied, restricted, and amended, after they come into Court, and that no new *inducię* are allowed upon that account, the respondents must confess themselves at a loss to discover where should be the difficulty, in the present case. The respondents have already admitted that the Court could not apply any rule of Court, or proceeding in ordinary process, so as to deprive a defender, in a process of removing, of these *inducię* of forty days previous to Whitsunday. But *salva hac regula;* they do contend that a process of removing is, as much as any other, subject to the equitable interposition of the Court; and the allowing parties to limit, or even innovate and amend the conclusions of their summons, when they demand to do so, is supported by considerations of justice and the circumstances of parties. The respondents referred to the case of the *Duke of Gordon* against *M'Pherson, 2d March* 1756.

On advising the petition and answers, the Lords adhered.

The following opinions were delivered:—

Coalston. The Act, 1555, was founded in justice and expediency then, and is still more so now, when tacks are become more valuable. The Act of Sederunt removes some *minutię*; but still the main principle remains, that tenants may have time to provide themselves. The Act, 1555, has been always benignly interpreted. When the term of removing is different from Whitsunday, still warning has been required forty days before Whitsunday. The precise question, as to Beltane, has never been determined; but it has, as to a Martinmas removing. There ought to have been a warning forty days before the Whitsunday preceding the term of Beltane; *i. e.* more than a twelvemonth before the time of removing. It was right to allow an amendment of the libel; for that only superseded the necessity of a warning; but here more is sought to be done;—to cut off the tenant from a benefit which he would have had, if the libel had not been amended. I cannot distinguish the Duke of Gordon's case from this case. Suppose that the amendment had not been sought till forty days before Beltane, the argument for removing would have been the same; and yet it would have been hard to cut the tenant short.

Justice-Clerk. The error of the defender is in the principle of the interlocutor. A warning to remove at a term, in 1769, must imply an act of the proprietor warning to remove at a term in 1770, or any subsequent period. Here the Court has proceeded upon this act of the proprietor.

Gardenston. I do not think that the warning was originally erroneous. If the term of Beltane had been posterior to Whitsunday, there might have been a wrong, by constraining to remove too soon; but an indulgence, allowing to remove later, cannot be explained to be a wrong. What is not good sense is not good law.

Coalston. If this warning was given forty days before Beltane, to remove at Whitsunday, there might be a strong ground of equity.

HAILES. My difficulty still is as it has been, on account of the decision of the Court in 1756, *Duke of Gordon* against *M'Pherson* and *Kinguissie*, and the argument, from the analogy of informal warnings there used. A like decision was repeated about 1766, *M'Lean of Drimnin* against *Cameron of Glendissery*.

PITFOUR. The capital argument for the tenants lies in this, that the Act of Parliament requires warning forty days before Whitsunday: If there is a singular term like Beltane, still the general term must be followed; because I must have time to find out another possession. In the case of a tack expiring at Martinmas, you must give a warning forty days before Whitsunday. You must not cut off the *inducia* by amending the libel, though you may cut off from the form of the action. It has been said, that warning to remove at Whitsunday 1769, implies warning to remove at Whitsunday 1770. *Answer.* The contrary was understood in the Duke of Gordon's case; and, indeed, how can a tenant fix himself in a possession when warned to remove at an uncertain term.

KAIMES. The Act of Parliament can never mean, that, if a man is to remove at Beltane, he must be warned forty days before the Whitsunday preceding. If the term of removing is different from the common term, then we must determine from analogy; *i. e.* forty days before the term.

COALSTON. If that is law, then the Court has erred in ten different cases since I sat here.

On the 6th February 1770, "The Lords repelled the objection; and found that the tenants must remove at Beltane 1770;" adhering to an interlocutor, 19th December 1769.

Act. H. Dundas. *Alt.* Ilay Campbell.

Reporter, Monboddo.

Diss. Pitfour, Coalston, Strichen, Stonefield, Monboddo.

1770. *February* 13. The ROYAL BANK of SCOTLAND *against* ADAM FAIRHOLM of Greenhill.

ADJUDICATION.

Stock of the Royal Bank of Scotland adjudgeable.

[*Faculty Collection, V.* 46; *Dictionary, Appendix I.*; *Adjudication, No.* 3.]

MONBODDO. Bank-stock is an incorporeal subject. The pursuers have only a right to the profits accruing to the company, and having *tractum futuri temporis*. Adjudication is therefore the proper diligence. The Act of Parliament, 6th Geo. I., and the charter, speak of attachments and arrestments. Attachments must be something of the nature of arrestments. Strange, if creditors were to be debarred from every sort of diligence. Yet this is the argument for the Bank.