tenant in Tyrick, of Aberarder, in which they obtained decreet *in foro*. The cause was advocated at the instance of Smith, who pleaded, *Primo*, That the execution of the summons by the sheriff-officer was signed by the witnesses blank, and therefore was null in terms of the Act of Sederunt 1704. *Secondly*, That the removing was irregular, in respect that, although his entry was to the houses and grass at the Whitsunday, and to the arable land at the Martinmas, yet the summons was to remove from the whole at the Whitsunday. The Lord Covington, Ordinary, 9th August 1776, sustained both defences and assoilyied; although, as to the first defence, it was pleaded, that the Act of Sederunt 1704 related only to executions by messengers,—(See Executions:) That the contrary was the practice in inferior courts; and that, at any rate, the informality was dispensed with by the appearance of the defender, and the decreets being *in foro*. And as to the second, that in these highland farms the arable land was a mere figure; that the whole was pasture, and the other nothing,—and therefore the entry to the whole ought to be held to be at the Whitsunday.

On advising a reclaiming petition and answers, the Lords, 17th January 1777, thought the second point clear, and decisive of the cause. Therefore they adhered to the Ordinary's interlocutor sustaining this defence and assoilyieing the tenant, and found it unnecessary to determine the first point as to the execution of the summons. They found no expenses due.

In this cause another reclaiming petition was presented, wherein it was insisted that, by the practice of this estate, and that of many counties both in the North and South of Scotland, even in corn farms, the entry to the whole was at Whitsunday, only the outgoing tenant was entitled to roup and carry off the corn-crop of that year; but not to eat or cut the grass, or to have any other concern with the farm. And for proving of this, evidence was produced, *viz.* excerpts from the tacks on this estate, and certificates from the Sheriff-clerks of several counties, Inverness, Ross, Nairn, Elgin, &c., as to the practice of these Courts in decreets of removing.

The Lords were moved by this; for, although they were determined to hold firm the rule, that, where the entry is at two terms, the removing must be so too, and executed forty days preceding the first of these terms; yet, as in this case the entry was to the whole at the Whitsunday, only the outgoing tenant allowed to reap and carry off the grain crop as above, they pronounced the following interlocutor:—"Find the process of removing within-mentioned sufficient to remove the respondent from his farm of Tyrick at the term of Whitsunday next 1777: but find that, notwithstanding thereof, he still has right to reap, and carry off the grain crop of said farm; and under this quality decern him to remove accordingly."

The LORD-ADVOCATE and JAMES RIDDLE, ESQ. *against* The TENANTS of ARDNAMURCHAN.

WHILE the estate of Ardnamurchan was under sequestration, the tenants obtained tacks, by the authority of the Lords, for the space of nineteen years,

from Whitsunday 1753: "But with and under this special quality and provision, that, in case of a judicial sale of the lands before the expiration thereof, it shall be in the option of the purchaser to be free of this tack at the expiration of three years from and after his purchase and entry to the lands; which option he shall be obliged to declare by a writing under his hand one full year before the lapse of the said three years, to be intimated under form of instrument," &c. The estate having been purchased by the Lord-Advocate, he made intimation to the tenants to remove, in terms of the above quality. The tenant objected to his title, as not clothed with infeftment. The Court were of opinion that the purchaser, who succeeded to every right, either in the factor or Court, was entitled to remove the tenants without infeftment, just as much as if he himself had set the tacks. The argument was strengthened by the special clause in the tacks above narrated.

1773. SUMMER. WILLIAM ALEXANDER *against* The TENANTS of DORNOCH.

THE estate of Dornoch having been brought to a judicial sale, in lots, the fishings were bought by William Alexander, merchant in Edinburgh, who, having extracted his decreet of sale, and obtained from the factor an assignation to a process of removing, which the factor had raised before the Sheriff against the tenants, insisted in the process. But it being objected that he had not yet completed his titles by infeftment, the Sheriff sustained the objection; and so did Lord Monboddo, 19th February 1771, in a process of advocation brought by Mr Alexander.

His Lordship, however, on a representation stating the above mentioned decision in the case of Lord-Advocate, pronounced this interlocutor:—"2d July 1771. Having considered this representation, with the answers, and the late decision of the Court in the case of the Lord-Advocate, and that Mr Alexander is insisting in this removing, not only as purchaser, but as assignee by the factor to a process of removing which was depending before the sale, alters the former interlocutor, sustains Mr Alexander's title to insist in this action," &c. He afterwards decerned in the removing, 18th January 1773.

And, upon advising petition and answers, the Lords adhered.

In this case all the tenants, except one, had formerly been removed by the factor, and were again admitted to the possession by the factor; and the one above excepted never had been in possession at all.

In this case also, the Lords were of opinion, that their factor could pursue a removing on the Act of Sederunt 1756, as well as any heritor.

1766. *February 27.* CARLYLE, Factor on Kilhead, *against* LOWTHER.

As a factor on a sequestrated estate ought to have all the powers of a proprietor infeft, in order to enable him to manage it to the best advantage,