

the pursuer, although she had desired him, no more than if she had desired any stranger to do it.

Fol. Dic. v. 1. p. 432. Durie.

No 23.

* * See this case No 44. p. 914.

* * Spotiswood reports the same same :

1629. *February 6.* In an action pursued by the Lady Borthwick, against Sir William Scott of Goudilands, to remove from the lands of Pirntaton; *alleged*, no process upon the pursuer's warning, because it was prescribed by the act of Parliament 1579, the warning being made in April 1624; and the summons not being raised till May 1627; so that three years complete had intervened, *Replied*, the term whereunto the warning was made, was not till Whitsunday 1624, between which and his summons there were not three years. THE LORDS sustained the warning.

March 5. Afterwards in that same action, Goudilands having excepted upon a tack; which the pursuer *replied* was reduced; *duplied*, she could not quarrel his tack, because he offered to prove, that since the warning he had paid taxation of the same lands for her relief, and at her command and direction. *Triplied* not relevant, unless it were alleged, that he had paid it as a part of the tack-duty; for otherwise if he had not been obliged to do it, it would not prejudice her, although she had desired him, no more than if she had desired any stranger to do it. THE LORDS repelled the exception and duply, unless he would say as in the triply.

Spotiswood, (REMOVING.) p. 286.

1671. *June 24.*

MAIN *against* MARCH.

MAIN having gotten a decreet of removing against March, from a tenement in the Canongate, having thereupon charged him to remove, he did suspend upon this reason, that the charger after the decreet, had received mails and duties for terms subsequent to the removing, and therefore had past from the removing, and behoved to be of new warned. It was *answered*, that the payment of the mails and duties was not voluntary, but upon a decreet, and therefore was not a passing from the removing. THE LORDS did find the letters orderly proceeded, and found that albeit voluntary payment of a terms mail and duty subsequent to a warning, was a passing from the same, so that the tenants behoved to be of new warned, yet after a decreet of removing, he suffering the tenant to remain for another term, might pursue for mails and duties, and thereby did not prejudice his former decreet, both these remedies of law being consistent against an unjust possessor and tenant, to make use of his decreet of removing, and to charge and receive payment for the mails and duties.

Fol. Dic. v. 1. p. 432. Gosford, MS. No 362. p. 177.

No 24.

Voluntarily receiving of mails and duties after a decreet of removing is a passing from it, but if it be upon a decreet for terms subsequent to the warning, it hinders not to charge for removing, so that there needs no new warning.