

1652. *February.* DOUGLAS *against* TENANTS OF KINGLASSIE.

No 32.

A DECREE for poinding the ground may be obtained before the term of payment, superseding execution till after the term. See No 30.

Fol. Dic. v. 1. p. 538. Gilmour. Stair.

* * * This case is No. 10. p. 1282. *voce* BASE INFERTMENT.

1681. *June 16.* LADY CHATTO *against* HALYBURTON.

No 33.
A decret of removing sustained, tho' pronounced before the term.

THE Lady Chatto having obtained decret of removing against Mr Thomas Halyburton, tenant in Over-Chatto, who having given in a bill of suspension, the cause was ordained to be discussed upon the bill. The suspender insisted upon this reason, that he was warned to the term of Whitsunday last; and, therefore, could neither be pursued nor decerned till the term were past; whereas, the decret is before the term, being pronounced upon the 17th day of May last; so that the summons of removing could not be relevant, and the defender ought to have had a competent time to make his defence after the term was past. It was *answered*, That the summons was just and relevantly libelled, for as a summons of removing may be, that he was warned, and the term to which he was warned was past, and, therefore, craving him to be decerned instantly to remove; it might also be relevantly libelled, that he was warned; and, therefore, ought to be decerned to remove at the term, which is both just and fit; for, otherwise, lands cannot be securely set, that both the master and the new tenant may be certain, by clearing all the pretences of the warned tenant, that, upon the decret, he may be by letters and precepts of possession dispossessed, and the new tenant entered: Therefore, the LORDS sustained a decret of the same nature, in the case of Riddel against Zinzan in Leith, November 21st, 1671, *voce* REMOVING.

THE LORDS sustained the decret of removing.

Fol. Dic. v. 1. p. 538. Stair, v. 2. p. 875.

* * * Fountainhall reports this case.

THE Lady Chatto having obtained a decret of removing against a tenant, and a bill of suspension being presented of it, upon these reasons, *imo*, The citation before the Sheriff was only upon 24 hours; this was repelled, in regard there was no reduction; *2do*, That both the summons and decret of removing were before the term of Whitsunday; whereas, the constant stile and form of removings is, that the 40 days being expired, and the term past, yet

he refuses to remove. "THE LORDS found this no nullity, it being only *declaratoria juris*, and for expediting removings; and that it could not be put in execution till after the term." Yet some thought, tenants were favourable in law, (as appears by many of our acts of Parliament,) and were not so strictly to be used; and that the anticipation was contrary to the analogy of law which is to be observed: Yet Stair in his Institutions, Tit. 19. approves of this decision.

No 33.

Fountainball, v. I. p. 142.

S E C T. V.

Solemnities requisite in the execution of diligence.—Purification of condition debts.

1605. June 5.

DRUMLANRIG *against* MAITLAND.

IN a declarator pursued by the Laird of Drumlanrig against the Laird of Auchingassel, and his son Robert Maitland; it was *alleged* by Robert Maitland, That the horning used against him was null, because he was denounced at the market-cross of Edinburgh which was not lawful, he not dwelling within that sheriffdom but in Annandale. It was *answered*, That the horning was lawful, having an act of Secret Council commanding a macer to pass particularly to the market-cross of Edinburgh and denounce the said Robert rebel for his present contempt and disobedience done to them, he being called before them for diverse odious offences; and, after compearance, being commanded to remove and remain in the outer house while he was called, he absented himself contemptuously, and became fugitive, and therefore was denounced, as said is; in respect whereof, the LORDS sustained the horning, and found it sufficient, notwithstanding the allegiance.

No 34.

A horning executed in Edinburgh, while the party was in another district, was sustained, because an order of Privy Council had been issued to denounce them for contempt of authority.

Haddington, MS. No 791.

1623. December 17.

E. of GALLOWAY *against* VAUNS.

IN an action betwixt the Earl of Galloway *contra* Vauns, the LORDS sustained a charge of horning executed by virtue of letters raised before the term of payment contained in the bond whereupon the said letters were raised; seeing the letters bore, to charge the party obliged to make payment when the term of payment was bypast; and that no charge was executed upon the said letters,

No 35.