

principal sum was declared not upliftable by the creditors, without the consent of certain persons as trustees for these others. The creditors and trustees applied, by petition, to have up the bond, in order to suit execution upon it in Granada, and recover payment. The Lords, 7th December 1775, pronounced this interlocutor:—"Grant warrant to, and ordain the Sheriff-clerk of the shire of Renfrew, in whose books the within-mentioned bond is recorded, to deliver up the same to the petitioners, upon their finding sufficient caution, and lodging a bond with the clerk to that purpose, to redeliver the said bond to him, or his successors in office, keepers of the said register, under the penalty of L.1300 sterling, and that betwixt and the 6th day of June 1777.

Against this interlocutor the parties petitioned, setting forth, that, as the intention of getting the bond out of the register, was to procure payment; so, if payment was procured, the bond fell to be delivered up to the debtor, and could not be returned. Upon this the Lords remitted the petition to the Ordinary on the Bills, and upon his report they pronounced an interlocutor,—of consent of the petitioners their offering the caution aftermentioned, "ordaining the bond to be delivered in terms of their former interlocutor, but declaring that the caution should be either to return the bond as above, or to apply the sums recovered, from the debtors in said bond, precisely for the purposes mentioned in the bond itself, and for the behoof of all concerned."

This is now held to be a precedent, and has been followed in other cases, *27th January 1776, Clark.*

Quere. Should an application of this sort be made to an inferior judge, sheriff, commissary, &c., how must he proceed? In June 1764 a petition was given in to the Sheriff of Edinburgh, setting forth that, in order to carry on a suit in England, it was necessary to act upon a principal bond registered in his register. They offered caution to return the bond. See a case by Forbes.

In a case marked by Kilkerran, p. 479, *Lundie, petitioner*, the Lords granted a like warrant without caution. In this case nobody appeared to have interest in the bond except the creditor-petitioner. They appointed the fact to be marked on the margin of the record.

1778. December 16. JOHN SPOTTISWOOD, and JOHN WAUCHOPE, Writer to the Signet, his Attorney, Petitioners.

THIS day, John Spottiswood, Esq. and John Wauchope, his attorney, petitioned the Court, setting forth, that, in summer 1777, having registered in their Lordships' books a bond to him by Mr Davie, an Englishman, at that time residing in Scotland, Davie had now brought a suit in Chancery for setting the said bond aside; therefore it was necessary for him to produce said bond in said suit,—not only to get the better of the action raised, but to obtain payment, so could not return it. But without their Lordships' warrant he could not get the bond from register.

The Lords, though for some time past they had complied with demands like this, only upon a receipt and caution to return the bond within a limited time;

yet observing that their predecessors had gone a step farther, and, in a case similar to the present, (see Kilkerran, p. 479, *Lundie, petitioner*,) had complied with the demand, without caution or an obligation to return, they pronounced the following interlocutor :—“ Grant warrant and ordain the Clerks of Session, their deputes, and substitutes, to deliver the principal bond to the petitioners, or either of them, on a receipt to be granted by the receiver, and ordain it to be marked on the margin of the record that the said bond was, of such a date, delivered up for the purpose mentioned in the petition, and that it was so done by warrant of the Lords.”

REMOVING.

1770. MACNAB of INCHEWEN *against* The COMMISSIONERS of the ANNEXED ESTATES.

A TENANT had entered to the houses and grass of his farm at Beltan, and, at the separation of the crop, to the lands. He was pursued, forty days before Whitsunday 1769, to remove, at Whitsunday that year, from the houses and grass; and, at the separation of the crop, from the arable lands. This was objected to, as the term of entry, and consequently of removal from the houses and grass, was Beltan, *viz.* the 1st of May, not Whitsunday. And it was maintained, that a warning or process forty days preceding Whitsunday 1769, could only be effectual to remove the tenant, at soonest, from the houses and grass at Beltan 1770, and from the arable lands at the separation of the crop said year. And so the Lords found.

1765. *February* 14. MACNAUGHTON *against* WILSON.

A CASE is observed by Kilkerran, p. 480, where the entry to a part of a subject was at Candlemas, and to another part of it at Whitsunday. And it was found, that a warning, forty days before the Whitsunday preceding the first of these terms, was necessary, in order to remove the tenant from one part of the subject at Candlemas, and at Whitsunday from the other. A like decision, in a case precisely similar, was pronounced, 14th February 1765, Macnaughton *against* Wilson, 4 *New Coll.*, p. 14.