

No 16. the maker of the warning may not call nor persew him for violent occupatioun; because, be ressavng of the maillis foirsaid, he ratyfyit and approvit. him tenent, and *tacite* past fra the said warning.

*Fol. Dic. v. I. p. 432. Balfour (REMOVING.) No 125. p. 461.*

No 17.

Service or good deed received from the husband, annuls a warning previously given to him; and his wife after his death cannot be removed upon that warning.

1550. June 20. JOHN WALLACE *against* SIBILLA CATHCART.

WARNING beand maid to ony persoun havand ane lauchful wife, quha happinis, efter the making of the samin, to deceis; nather his wife, as wife, nather as haill intronissatrix with his gudis and geir, may be callit and persewit to flit and remove be ressoun of the said warning, gif the maker thairof, efter making of the samin, chargit hir husband, befoir his deceis, as tenent of his saidis landis, to ride, gang, or serve him on ony of his occasionis, materis, or affairis, and acceptit the samin fra him as tenent foirsaid.

*Fol. Dic. v. I. p. 432. Balfour, (REMOVING.) No 126. p. 461.*

No 18.

Service or good deed received from the tenant, stops the warning.

1563. January 8. ALEXANDER BOYD *against* ROBERT BOYD.

WARNING beand made to ony tenent or occupiar of lands, quha of befoir was in possessioun of the saidis landis, and in use of payment, and doing of certane dewties and service thairfoir, efter the tenour of his tak and assedatioun; gif the maker of the warning, efter the making thairof, acceptis fra the tenent ony part of the said service, ariage, cariage, or uther dew service, the doing and acceptatioun thairof makis the tenent unremovabill for that zeir: Bot gif the tenent bruik and joise the saidis landis be virtue of ony tak or assedatioun, and he do his master ony service or dewtie quhilk is not contenit in the said tak and assedatioun, the doing and acceptatioun thairof is not helpful to the tenent, nor hurtful to the master; because the tenent was not oblist to do the samin.

*Fol. Dic. v. I. p. 432. Balfour, (REMOVING.) No 130. p. 462.*

No 19.

A decree of removing was found to be renounced by the pursuer after obtaining it, receiving the rent from the tenant.

1579. January 21. LINDSAY *against* TENANTS.

THERE was one Margaret Lindsay, and Mr James F. her spouse, for his interest, that pursued one for the succeeding in the vice of one A. who answered and alleged, that he ought not to be decerned to succeed in vice, because his author against whom the decret was given, and also before the warning whereupon the decret past, set the tack that he had to run of the lands that he was called for the succeeding in the vice into, and renounced, and gave over all kindness, right, and title that he had to the said lands to the said A. which proceeded upon the said warning. To this was *answered*, That he

could not allege that decret, because that since the giving of the same, he had received the mails and duties of the lands, and so had *tacite* passed from the same. To this was *answered*, That albeit he had received the mails and duties, yet he had not passed from the decret, but only from the execution of the same, and the decret ought yet to serve for *declaratoria juris*, so that he against whom it was given could never make any right thereof to any other person. The contrary was *alleged* directly by the other party, that the receiving of the mails and duties took away the decret *in toto*, and that no violence could be sought after the receiving of the mails and duties, so there could be no succeeding in the vice. THE LORDS found by interlocutor, that the defender ought not to be decerned succeeded in the vice, and so admitted the exception, and that the receiving of the mails and duties, after the giving of a decret, takes away the same *in toto* as was practised in the action betwixt the Earl of Morton and the Laird of Laggat.

No 19.

*Fol. Dic. v. 1. p. 432. Colville, MS. p. 275.*

1581. *March.*The LORD GRAY *against* His TENENTS.

No 20.

THE Lord Gray warned a tenant to flit and remove from a piece land. It was *answered* by the tenant, that he ought not to remove, because the said Lord had an yearly consuetude or use within his barony to take a cuddich in meal and drink from every tenant, and now he had converted the same into a sum of money, and took six merks from each man therefor, according to use, and he had received from the defender six merks since the warning. It was *answered*, that his cuddich was no duty of the ground, but a thing done of benevolence. THE LORDS found the exception relevant, and that the taking of the cuddich stopped the said removing.

*Fol. Dic. v. 1. p. 432. Colville, MS. p. 327.*

1594. *March.*LAIRD of SPYNIE *against* BOTHWELL.

No 21.

IN an action of removing pursued by my Lord of Spynie against the tenants of Bothwell, it was found, that the receipt of the Whitsunday's mails at the whilk the warning is made, and of the fermes of the crop sown and growing upon the ground at the time of the warning, prejudices not the said warning, unless it be the mails or fermes of ane subsequent crop by that quhilk is sown and growand at the time of the said warning.

*Fol. Dic. v. 1. p. 432. Haddington, MS. No 521.*