

1767. December 15. ANDREW WAUCHOPE of NIDDRY *against* ARCHIBALD HOPE.

REMOVING.

The Act 1555, with regard to Warnings, does not apply to Coal-works.

[*Faculty Collection, IV. p. 121; Dictionary, 13,847.*]

COALSTON. I wish that Mr Hope had been more explicit in confessing or denying facts. The question is as to the Act 1555. It relates to lands, and has been so understood by the practice of the Court: it does not apply to houses in towns or to houses in the country without lands, to soap-works, to coalleries. Removing is not necessary. Notification was given.

MONBODDO. I give great weight to the old decisions; *Hope* gives the true reason of the law, "*because, in coal-works, there are no terms.*" In rural tenements there are *terms* or times for sowing, &c.; so that a tenant must know whether he is to be allowed to reap that which he sows. In a case, 1741, *Lord Darnley*, no warning was required after the expiry of a tack of feu-duties. There is nothing in the objection of Captain M'Dougall not being called, for the tack was assignable, and was assigned.

AUCHINLECK. A case of the same kind occurred within these few weeks. Baird had a tack of the dung of Portsburgh: he pretended that a warning was necessary. This was justly repelled by the Court.

"The Lords remitted to the Sheriff to discern in the removing."

*Act. D. Rae. Alt. R. Blair. Reporter, Stonefield.*

1767. December 24. CAPTAIN JAMES STEWART *against* ALEXANDER ROBERTSON.

FREEHOLDER.

The Court of Session cannot receive new evidence from a complainer against a judgment of the Freeholders.

[*Faculty Collection, IV. 123; Dictionary, 8874.*]

BARJARG. We cannot touch the first question, because the House of Peers has found that it is *extrajudicial* to determine *in causa*. When there is a preliminary objection, this case is like that of *Sir John Gordon*.