1777. *January* 16. CAMPBELL *against* MACALISTER.

THE proper execution, on a decreet of removing, is to eject the tenant in virtue of a precept on letters on ejection. This is done symbolically, by throwing part of the tenant's furniture to the door, extinguishing his fire, &c. Archibald Campbell of Askomill recovered decreet of removing against Duncan MacAlister, his tenant, in certain lands near Campbeltown; and he ejected MacAlister symbolically, having extracted his decreet before intimation of a bill of suspension upon which MacAlister had obtained a sist, the symbolical ejection and sist being dated the same day. Afterwards the bill was passed with advice of the Lords, the suspender finding caution for damages and violent profits, 7th February 1776.

At discussing, the chief point which occurred was the competency of a suspension of the decreet of removing; the same having been carried into execution by the ejection, so that the only remedy competent was by reduction. The Lords seemed to be of opinion that the symbolical form of ejection by extinguishing the fire, &c. was a good ejection, and was almost the only method practised; a real ejection, by turning the family to the street, being seldom practised. But then they thought, that, as there lay good objections to the decreet of removing, which stood upon a rotten foundation, and as the ejection was only symbolical, it was in their power to give relief. And therefore they "repelled the objection to the competency of the suspension; and upon the merits they suspended the letters *simpliciter*, and found expenses due." And this day, 16th January 1777, they refused a reclaiming petition, without answers, and adhered.

As to the merits of the decreet of removing, the Lords thought it oppressive. The tenant had paid up, immediately after being acquainted of the decreet, which was in absence, though indeed he was personally cited, every shilling of arrears, and all expenses, and was willing to find caution *in futurum*, but which was not insisted for, being unnecessary. There was no conventional irritancy in the tack, but only a legal one, of which the master had endeavoured to take advantage, but which had been purged by the tenant as above; and the decreet decerned the tenant to remove at the Whitsunday from his whole possession, although, in fact, by the tack, the entry was to the houses and grass at the Whitsunday, and to the arable lands at Haliday. Upon all these reasons, the Lords were unanimous as to the merits of the decreet of removing; but they differed, whether, in point of form, the remedy against it was competent by suspension, or by reduction. The majority, however, were of opinion that, in this case, it was competent by suspension.

1777. *January* . FALCONERS *against* SMITH.

HUGH Falconer, merchant in Nairn, and James Falconer at Draikies, commissioners for William Macintosh of Aberarder, pursued a removing, on the Act of Sederunt 1756, before the Sheriff of Inverness, against Finlay Smith,

tenant in Tyrick, of Aberarder, in which they obtained decreet *in foro*. The cause was advocated at the instance of Smith, who pleaded, *Primo*, That the execution of the summons by the sheriff-officer was signed by the witnesses blank, and therefore was null in terms of the Act of Sederunt 1704. *Secondly*, That the removing was irregular, in respect that, although his entry was to the houses and grass at the Whitsunday, and to the arable land at the Martinmas, yet the summons was to remove from the whole at the Whitsunday. The Lord Covington, Ordinary, 9th August 1776, sustained both defences and assoilyied; although, as to the first defence, it was pleaded, that the Act of Sederunt 1704 related only to executions by messengers,—(See Executions:) That the contrary was the practice in inferior courts; and that, at any rate, the informality was dispensed with by the appearance of the defender, and the decreets being *in foro*. And as to the second, that in these highland farms the arable land was a mere figure; that the whole was pasture, and the other nothing,—and therefore the entry to the whole ought to be held to be at the Whitsunday.

On advising a reclaiming petition and answers, the Lords, 17th January 1777, thought the second point clear, and decisive of the cause. Therefore they adhered to the Ordinary's interlocutor sustaining this defence and assoilyieing the tenant, and found it unnecessary to determine the first point as to the execution of the summons. They found no expenses due.

In this cause another reclaiming petition was presented, wherein it was insisted that, by the practice of this estate, and that of many counties both in the North and South of Scotland, even in corn farms, the entry to the whole was at Whitsunday, only the outgoing tenant was entitled to roup and carry off the corn-crop of that year; but not to eat or cut the grass, or to have any other concern with the farm. And for proving of this, evidence was produced, *viz.* excerpts from the tacks on this estate, and certificates from the Sheriff-clerks of several counties, Inverness, Ross, Nairn, Elgin, &c., as to the practice of these Courts in decreets of removing.

The Lords were moved by this; for, although they were determined to hold firm the rule, that, where the entry is at two terms, the removing must be so too, and executed forty days preceding the first of these terms; yet, as in this case the entry was to the whole at the Whitsunday, only the outgoing tenant allowed to reap and carry off the grain crop as above, they pronounced the following interlocutor:—"Find the process of removing within-mentioned sufficient to remove the respondent from his farm of Tyrick at the term of Whitsunday next 1777: but find that, notwithstanding thereof, he still has right to reap, and carry off the grain crop of said farm; and under this quality decern him to remove accordingly."

The LORD-ADVOCATE and JAMES RIDDLE, ESQ. *against* The TENANTS of ARDNAMURCHAN.

WHILE the estate of Ardnamurchan was under sequestration, the tenants obtained tacks, by the authority of the Lords, for the space of nineteen years,