

1712. *December 2.*JOHN STIRLING, brother to Sir Mungo Stirling of Glorat, *against* Mr WILLIAM GORDON of Balcomy, Advocate.

No 77.

A precept of warning, held to be duly executed, though the publication thereof, at the parish church door, was some days before the execution against the tenant.

In a removing, at the instance of John Stirling against Mr William Gordon, the defender *alleged*, That the execution of the precept of warning was null and informal, in so far as the execution against the defender preceded the publication at the parish church, which was several days after, and act 39. Par. 6. Q. M. requires the precept to be executed against the tenant, and thereafter to be read at the parish church-door; which dilatory defence the Lords repelled, and sustained process, thinking it sufficient that both execution and publication were 40 days before Whitsunday.

*Fol. Dic. v. 2. p. 337. Forbes, p. 639.*

1715. *February 8.*THE DUTCHESS OF BUCCLEUGH *against* JOHN DAVIDSON and Others.

No 78.

Found in conformity with the above.

THE Dutchess of Buccleugh having raised a process of removing against Davidson and Others, out of some of her lands, it was *alleged* for the defenders, That they were not duly warned, because, *1mo*, The warning was only on the fifth of April, which is not 40 free days before Whitsunday; *2do*, That the warning was executed at the kirk-door, before it was executed against the defenders; *3tio*, That the execution did not bear on what day the copies were left on the ground.

*Answered* for the pursuer, *1mo*, That there were 40 free days betwixt the execution and the term, counting the day of execution; *2do*, That the warning was executed personally at the kirk-door, and on the ground, which are all the solemnities required by law; and no matter whether the execution was first at the kirk-door, or to the party; *3tio*, That the execution bearing the copy, to be left on the ground, and that the tenants were warned the 5th of April, that date respects both the warning the tenants personally, and on the ground.

THE LORDS repelled the defences, and decerned in the removing.

Act. —.

Alt. *Boswel.*Clerk, *Sir James Justice.*

*Fol. Dic. v. 2. p. 337. Bruce, v. 1. No 59. p. 73.*

1732. *February.*ROBERTSON *against* CALDER.

No 79.

A SUMMONS of reduction of a tack of fishing, containing this conclusion, "that the defender should be decerned to cede possession," raised and executed 40