1754. *November* 22. CORMACK *against* COPLAND.

IN this case the Lords seemed to be of opinion that an extraordinary removing of a tenant, that is, a removing without warning, upon his being two terms in arrear, and unable to find caution, or upon his being unable to plough or sow the farm, so that there is hazard of its lying waste, is not competent before the sheriff; because it is, in effect, a reduction of an heritable right, which is only competent before the Court of Session: and so it was decided in two cases, one in the year 1632 and the other in the year 1681. *Dissent.* Drummore, who thought that in many cases it might be exceedingly inconvenient if the sheriffs had no such power.

In the same case, it was the opinion of the Court that if a tack was set aside as null, for not being written on stamped paper, and if after that the tenant should delay to supply this defect till the master had set the tack to another, and then should get the paper stamped, and upon that ground attempt a reduction of the decreet setting aside the tack, he could not be heard, because *res non erit integra,*—the tack being set to another, and the master not obliged to wait till the tenant should think fit to stamp his tack.

1754. *November* 28. ——— *against* ———.

[*Fac. Col.* No. 120; and Kilk. *eodem die.*]

FOUND, upon report of Lord Huntington, then Lord Probationer, that, a defender being called before the sheriff-court, and dying during the dependance of the process, his heir, living out of the shire, might be called by letters of supplement though a principal defender; but to this effect, and no other, that the process might be advocated to the Court of Session and there carried on; for they were of opinion that a principal defender could not be called by letters of supplement to the effect of the process going on before the inferior court; and yet they thought, without letters of supplement, the process could not be advocated, for want of a defender in the field.

N. B. They did not determine whether it would not be necessary to raise a summons of transference in this Court; but I apprehend it would be necessary.

1754. *November* 28. ——— *against* ———.

UPON report of the same Lord Probationer, the Lords were of opinion that a