have been registered: Being now quarrelled as not being to be found in the record, we thereupon found it void and null. The party reclaimed and alleged that the records of inhibitions in that county were amissing from 1621 to April 1665, in which period this was executed. That the clerk's attestation is a *præsumptio juris* that it was booked, and no challenge to it in this Court before now. Yesterday we ordered the lawyers on both sides to look at the records and to be heard, and this day they reported what they had observed, and thereby it appeared the books extant were rather a collection of old schedules found in the office than a book of record, and was not all signed by the clerk-register, and many leaves still blank, and several different books of the same period of time;—therefore we refused the bill and adhered.

No. 8. 1748, Dec. 16. COMMISSARIES OF EDINBURGH *against* SHERIFF-CLERKS.

THIS day we again had under consideration a question we determined in 1737, and then resolved to make an act of sederunt on it, which was then prevented by a petition from the Commissaries, viz. Whether bonds, contracts, &c. can be registrate in the Commissaries books without a consent to registrate specially in their books, and whether bills could be there registrate? It was admitted that by the original commission and their instructions there could be no such registration without a consent to registrate in their books; and the question was whether the usual general clause "any Judges books competent" included their books? and it carried by a good majority, that they might be registrate there on that general clause. There were only three or four against it, *inter quos ego*. What seemed to move the Court was an averment not contradicted, that before 1654 clauses of registration were always special enumerating all the different Court books in which the writing could be registered *et inter alios* the Commissaries, and in that year the style first varied, and the general clause was substituted, which therefore must be understood as large as the special clause was wont to be, since the granter had no interest to oppose it, and the frequent registration in the Commissary books proved the general opinion. I again thought that the general clause meant no Court books but what were competent to that subject before, which I thought also the meaning of the act 1681 anent bills; and whereas it was said that by "competent" was meant all Courts competent to give an extract whereon horning might follow, I observed that that gloss would authorize registrating *extra territoriam* in every Sheriff's books in Scotland contrary to the act 1685, because I had no doubt that one might prorogate the jurisdiction of a Sheriff in whose jurisdiction he did not reside. I noticed also that by the same argument the Commissaries would be competent to the execution of all bonds contracts, &c. containing such a clause, for the same reason that we found a decreet-arbitral in London must be governed by the law of Scotland because of a consent to registrate in our books, (Ouchterlony against Francis Grant,) and appealed to the Commissaries instruction 1563 making them Judges to all contracts, &c. registrate in their books, and a decision 27th March 1627, Irving against Young, (DICT. No. 25. p. 7309.)

The President said that if this consequence would follow he would be against the Commissaries, for that would plainly take off the limitation of their jurisdiction to L.40,

but said that these instructions and that decision were not law now, but told us not how the law was altered. We also unanimously found them competent to tutorial and curatorial inventories, in which I agreed, because *datio curatorum* was expressly part of the first commission.

REMOVING.

No. 1. 1735, Feb. 13. STIRLING of Keir *against* M'QUEEN.

THE Lords decerned in the removing superseding extract till the 1st of March, and if the tenant before that time find caution for bygones, and also to labour and sow the ground of this crop, then stopped extract *simpliciter*; but continued the tenant in possession of the houses except those necessary for the labouring cattle till Whitsunday.

*** (The similar case of Alexander of Newton in July 1744 referred to here does not appear in the manuscript notes.)

No. 3. 1738, Dec. 1. GRANGER *against* HAMILTON.

A pretty new question was determined upon the import of the act of Parliament anent warning tenants, which requires the removing to be any time within the year 40 days before Whitsunday, Whether these words "within the year" refers to the term of the warning, or the conventional term of removing? 2dly, Whether these words mean within that year of God or within 12 months? The case was, that the conventional terms were Martinmas and Beltan, or first of May, and the warning was used in October of the year preceding that Martinmas. I thought at first that it behoved to be within a year or 12 months of the conventional term, but it was observed that this might be impossible where the conventional term was at Beltan or any other day within 40 days before Whitsunday. However Arniston continued still of that mind, but that stumbled me. The President thought that "within the year" meant within that year of God in which the Whitsunday was. However upon the vote it carried by a great majority to sustain the warning.

No. 4. 1739, July 1. PRINGLE *against* THE EARL OF HOME.

See Note of No. 1, *voce* EJECTION.

No. 6. 1740, Feb. 28. FACTOR ON THE ESTATE OF CARDROSS *against* D. WIGHT.

THE Lords found that the warning should have been in terms of the act of Parliament, and therefore sustained the objection.