

No 66.

part of a tenement within burgh, that the chalking of the door by an officer was not a lawful warning or citation; which they declared they would only sustain to be lawful when it was done at the instance of the setter of the tack or house, but not at the instance of a singular successor.

Gosford, MS. p. 43.

No 67.

The act of Parliament relative to warnings, does not apply to tenants within burgh.

1671. November 21.

RIDDEL against ZINZAN.

JAMES RIDDEL having set a soap-work and dwelling-house to Mr Zinzan for certain years, his entry being the last of November, and the end of the year coming now to be the last of November next, he warned Zinzan at Lammas, and now pursues him to remove upon the last of November; who *alleged* absolvitor, *imo*, Because by special act of Parliament all warnings are appointed to be at Whitsunday; *2do*, He cannot be obliged to answer a summons of removing unwarrantably raised before the term was past, and ere he had done any wrong by sitting after his term. The pursuer *answered*, That the act of Parliament anent warnings, related not to *prædia urbana*, or tenements within burgh; for the reason of the law being, that Whitsunday was a convenient season for tenants to provide themselves new seats, and necessaries for their living; it hath never been observed as to towns; and the pursuer hath warrantably raised the summons before the term, the conclusion whereof is only that the defender remove at the term.

THE LORDS sustained both warning and summons, and decerned.

Fol. Dic. v. 2. p. 336. Stair, v. 2. p. 5.

\* \* \* Gosford reports this case :

In a removing pursued at the said James's instance against Zinzan, from a dwelling-house and the soap-works at Leith; it was *alleged*, No removing, because the defender was not warned 40 days before the term, conform to an express act of Parliament, Queen Mary, Parl. 6. act 39. It was *replied*, That that act was only made as to tenants *in prædiis rusticis sed non urbanis*, and the tenements from which he was craved to be removed being in Leith, and the tack thereof bearing to expire the last day of November, both because the tenement was within burgh, and *ex pacto* he ought to remove.

THE LORDS found, that that act of Parliament did not comprehend tenements within burgh, the tenants whereof may be removed at any term after expiring of the tack, by chalking of their doors, or warning them by an officer 40 days before any term.

Gosford, MS. p. 19A