

1684. *March.* THOMAS WAUGH *against* GEORGE ABERCROMBY.  
No 71.

FOUND, That a malt-kiln and barn being set for a year, and not for a month or quarter, the tenant could not be removed without a preceding warning 40 days before the term, more than other tenants could be removed without such due warning.

*Fol. Dic. v. 2. p. 336. Harcarse, (REMOVING.) No 841. p. 240.*

\* \* \* Sir P. Home reports this case :

1684. *February.*—THOMAS WAUGH having set a tack of a malt-kiln and barn in Leith to George Abercromby, for a year from one Whitsunday to another; and the said Thomas Waugh having pursued George Abercromby to remove; *alleged* for the defender, That he could not be obliged to remove, because there was no warning used 40 days before the term. *Answered*, That the tack being only set for a year, there was no necessity of a warning, it being the custom of Leith and other places, that lofts and such other houses that are in the use to be set for months and weeks, albeit they be set for a year, yet the party may be summarily removed without a warning, as was decided in the case of the soap-house in Leith the 21st November 1671, Riddel *against* Charles Zinzan, No 67. p. 13828. *Replied*, That it is a principle in our law, and clear by the act of Parliament, that a tenant cannot be removed without warning albeit the tack was only set for a year, and the law makes no distinction whether the lands be *prædia urbana* or *rustica*, or if the tack be set for a year or more, seeing the tenants is presumed to possess *per tacitam relocationem*, unless he be warned to remove 40 days before the term, that he may have time to provide himself of a house or other convenience; and the case is vastly different from the taking of a loft or a house for a week or a month, for then it is tacitly implied, that the party that takes the loft or house, is no longer to continue in the possession; but, when a party takes a house from one legal term to another, he cannot be removed unless he be interpellated by a warning 40 days preceding the term, conform to the law. THE LORDS sustained the defence, and found the defender could not be removed before he were lawfully warned 40 days preceding the term of Whitsunday.

*Sir P. Home, MS. v. 1. No 581.*

No 72. 1686. *December 7.* MR WILLIAM GORDON *against* LERMONT of Balcomy.

MR WILLIAM GORDON Advocate pursuing a removing against Lermont of Balcomy, it was *alleged*, The warning was null by the 39th act of Parliament 1555, because it bore not that the party was warned on the ground of the lands.

*Answered*, The party was warned either personally, or at their dwelling-house, and a copy was left on the ground of the lands, and this being real *contra fundum* was enough. THE LORDS, on report, found it sufficient.

No 72.

*Fol. Dic. v. 2. p. 337. Fountainhall, v. 1. p. 434.*

\* \* \* Harcarse reports this case :

It being *alleged* against a warning made in July 1684, for removing at Whitsunday 1685, That the warning was not lawful, not being made within the year of the term of removing, and also made 40 days before the said term, and so disconform to the order appointed by act 39th, Parl. 6. Queen Mary;

*Answered*; The meaning is, that warning should be used within a year or twelve months of the term of removing, and not that both should be in the same year of God.

THE LORDS repelled the defender's allegiance as frivolous and captious.

*Harcarse, (REMOVING.) No 842. p. 241.*

1692. December 22.

Mr PATRICK COUPER, Minister at Anstruther, *against* Mr ANDREW BRUCE, late Minister there.

THE LORDS found there needed not formal warnings for minister's manse, but a summary removing; and that the manse followed the right of the church, and the stipend, and that Couper having right to the one, behoved also to have possession of the other; though Mr Bruce had a depending appeal before the General Assembly, and an act of Privy Council for a conference with the ministers of that presbytery, anent the right of that church, and they filled it *medio tempore*; for they *alleged*, It was *extra territorium* to the Privy Council to meddle with planting of ministers. And, as to the first, the President asserted, that these church appeals were not of a suspensive nature, so as to bind up the presbytery's hands from filling the church, if the presbytery from whom the appeal was interjected thought it frivolous, and if they took their hazard of the synod, or General Assembly's censure, if they should afterwards find the presbytery had proceeded rashly, in rejecting the appeal; but this frustrates the appeal, and makes the inferior court still judge.

No 73.

The manse follows the church and stipend, so the entrant may remove the possessor summarily without warning.

*Fol. Dic. v. 2. p. 336. Fountainhall, v. 1. p. 537.*