

1656. February 20.

M'BRAIR *against* SIR ROBERT CRICHTON *alias* MURRAY.

DAVID M'BRAIR pursues a removing against Sir Robert Crichton, who *alleged* absolvitor, because the warning was null, in so far as he being notourly out of the country, the warning proceeded on 40 days, not only at the ground and parish-kirk, but also at his dwelling-house, whereas it ought to have been on letters of supplement on 60 days, at the market-cross of Edinburgh, pier and shore of Leith. It was *answered*, That the act of Parliament anent warning was only on 40 days without distinction, being out of the country, or in the country; and it was sufficient that the summons of removing upon the warning was upon 60 days, because the warning at the house was rather an intimation than a citation, which was sufficient, seeing the defender had been but short while out of the country, not *animo remanendi*, and so had still a domicile where he was cited.

THE LORDS sustained the warning; but, in respect the defender had *probabilem causam dubitandi*, they superseded the execution till next Whitsunday, without any violent profits.

Fol. Dic. v. 2. p. 337. Stair, v. 1. p. 360.

No 101.
Removing sustained on a warning of 40 days, altho' the party was out of the country.

1715. February 8.

Dutchess of BUCCLEUGH *against* DAVIDSON.

THE LORDS decerned in a removing, though the warning was given on the 5th of April, and so not 40 free days before the term, without counting the day of execution.

Fol. Dic. v. 2. p. 337. Bruce.

No 102.

* * This case is No 78. p. 13836.

S E C T. VI.

Tenements within Burgh.

1678. July 24.

INGLIS *against* The CHILDREN of Bailie LERMONT.

MR JOHN INGLIS pursues the Children of Bailie Lermont for the mail of an house, wherefrom the Bailie being warned, did not remove at the term of Whitsunday, or within 40 days thereafter, which, by the custom of Edinburgh,

No 103.
Removing from houses in Edinburgh must be within 40 days after Whitsunday.