No 106.

B. 2. tit. 9. § 53. The statutory requisites, therefore, not having been complied with on this occasion, it is clear that the warning in question is illegal and void.

Besides, a town-officer has no power beyond the bounds of the Magistrates' jurisdiction. This warning, then, can have no more effect than if any private individual, by the landlord's direction, had given it.

Answered; As it has been admitted, that the act 1555 does not extend to houses within burgh, so it is likewise certain, that it relates to lands solely, and not at all to houses, though situated in the country; December 19. 1758, Lundin *contra* Hamilton, No 86. p. 13845. Nothing, therefore, but sufficient evidence that timeous warning has been given by the landlord to his tenant, whether verbally or by writing, is necessary to found an action of removing from a dwelling-house unconnected with lands; Tait *contra* Sligo, July 3. 1766, No 105. p. 13864. And, accordingly, though it has been usual for burgh-officers to give warning by chalking the doors within burgh, yet the authority of a Magistrate is not required for that purpose; so that the ceremony itself seems not to be of any necessity; June 24. 1709, Barton *contra* Duncan, No 75. p. 13832.

The Lords found 'the warning sufficient and remitted to the Sheriff with an instruction to decern in the removing.'

Lord Ordinary, *Westhall*. Act. *Cullen*. Alt. *H. Erskine*.

S. *Fol. Dic. v. 4. p. 224. Fac. Col. No 73. p. 127.*

1795. *June* 20. Alexander Jack *against* The Earl of Kelly.

No 107.
It is sufficient for the tenant of a house in Edinburgh to intimate to the landlord his intention of removing forty days before Whitsunday. See No 104. p. 13864.

Mrs Pitcairn had for many years possessed a house in the Canongate of Edinburgh, belonging to Alexander Jack, for which she paid rent at Whitsunday and Martinmas.

She died on the 23d February 1794; and next day the agent for the Earl of Kellie, her Representative, intimated to the landlord his intention of giving up possession of the house at the ensuing Whitsunday. Alexander Jack *insisted*, that as warning of an intention to remove had not been given at Candlemas, the Earl was liable for the rent of the next year; and a bill of suspension, presented by his Lordship, having been refused, he, in a reclaiming petition,

Pleaded; It is a settled point, that a landlord within burgh may remove his tenant upon giving him warning 40 days before the term of removal; Stair, B. 2. Tit. 9. § 40.; Bankton, vol. 2. p. 109. § 52.; Erskine, B. 2. Tit. 6. § 47. By the same rule, it must be competent to the tenant to leave the possession upon giving the like notice to the proprietor. It is indeed common for tenants to pay the rent due at Martinmas at the Candlemas following, and for the parties then to settle as to the possession for the ensuing year; but the landlord,

in the present case, had no rent to receive at that term, and had no communication with his tenant. No 107.

Answered; It is the uniform practice in Edinburgh and its suburbs, for the tenant who means to remove at Whitsunday to give intimation to the landlord at the Candlemas preceding, and for the landlord to give similar warning when he means to resume possession of his property. Accordingly, it is immediately after that term that houses let to most advantage; and it becomes a fair presumption, when no intimation of an intention to change is given on either side, that the contract is renewed for another year. In such cases, therefore, there can be no room for applying the general rule of law with regard to warnings; and least of all in the present case, where, from the tenant's long continuance in possession, the landlord had no reason to presume, and it cannot be pretended that the tenant had formed, an intention of removing.

THE LORDS, upon advising the petition, with answers, being of opinion that the notice was sufficient, remitted to the Lord Ordinary to pass the bill of suspension.

Lord Ordinary, *Dreghorn.* For the Suspender, *Rolland.* Alt. *Forsyth.*

D. D. *Fol. Dic. v. 4. p. 224. Fac Col No 180. p. 427.*

Act of Sederunt, 14th December 1756.

1763. *December.* Mrs MARY CAMPBELL of Boquhane *against* ROBERTSON.

No 108.
A tenant cannot be decerned to remove upon the act of sederunt, nor to find caution, unless a full year's rent be due at the date of the decree.

A TENANT being in arrear a full year's rent at Whitsunday 1763, a process was brought against him by the landlord upon the act of sederunt 1756, either to remove or to find caution for the arrears and for the rent of the five following crops. Three days after the action was called before the Sheriff, the defender paid up his whole arrears, and got a receipt for the same, which he produced in process. The Sheriff, however, judging it sufficient that the defender was a year in arrear when the process commenced, decerned in terms of the act of sederunt. But the cause being brought before the Court of Session by a bill of suspension, the Court were unanimous that in a process upon the act of sederunt, the tenant can neither be decerned to remove nor to find caution, unless a full year's rent be due at the date of the decree; and therefore appointed the bill to be passed.

Fol. Dic. v. 4. p. 224. Sel. Dec. No 211. p. 277.