

No 99.

are let together with a rural tenement. Accordingly Lord Bankton, Book 2. Tit. 9. § 53. in express words excepts fishings from this act.

THE LORD ORDINARY sustained the defences; and the pursuer having reclaimed to the Court, the LORDS refused the petition without answers.

Lord Ordinary, *Justice-Clerk.*

Act. *George Fergusson.*

Q.

Fol. Dic. v. 4. p. 223. Fac. Col. No 96. p. 150.

S E C T. V.

Upon what number of days.

1622. *January 11.*

L. FALLDOUNSIDE *against* BENNERSIDE.

No 100.

Where the tenant is out of the kingdom, if the warning at cross, pier and shore, be on 60 days; that on the ground and at the kirk may be on 40 days.

IN an action of removing, pursued by the L. of Falldounside against Bennerside, it was *alleged* by one of the defenders, That the warning was null, because at the time of the warning, and of before, the party warned was out of the country, and so ought to have been warned upon 60 days; and albeit, by a warrant of the Lords' letters, (as use is in such cases) he was warned at the market-cross of Edinburgh, and at the pier and shore of Leith upon 60 days, yet that could not be sufficient to sustain the warning, seeing the execution thereof made at the parish-kirk was only upon 40 days, as against a party within the country; whereas if it had been legally executed, it ought to have been also upon 60 days. THE LORDS repelled the allegiance, and found the warning sufficient, being executed at the market-cross, and shore of Leith upon 60 days, and at the parish-kirk upon 40 days; and found that it needed not to be executed at the parish-kirk upon 60 days, albeit he was out of the country, in respect he was warned at the market-cross upon 60 days, as said is.

Act. *Hopz & Bekher.*

Alt. *Stuart.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 337. Durie, p. 8.

* * A similar decision was pronounced, 17th July 1630, Lee against Porteous, No 12. p. 2182. *voce* CITATION.