No 104. drew's day for fishings, these being the known terms of entry in such cases; but, the law being general, a warning before Whitsunday is necessary, whatever be the term of entry.

THE LORDS sustained the reason of suspension. See No 107.

C. Home, No 31. *p.* 61.

1766. *July* 23.

ANDREW TAIT Organist in Aberdeen *against* JOHN SLIGO Merchant in Aberdeen.

No 105.
Not necessary to raise an action of removing, or use formal warning forty days before the term of removing, from tenements within burgh.

SLIGO possessed a shop in the town of Aberdeen, the property of Tait, who, on the 13th May 1766, presented a petition to the Magistrates, setting forth, that, in December preceding, he had informed Sligo, that the shop was set to another, and praying that Sligo might be decerned to remove from said shop.

To this petition Sligo gave in answers, and *objected* to the competency, as not being brought 40 days before the term, nor any formal warning executed, which he contended was necessary, in order to remove him.

Tait, in reply, *insisted*, That having told Sligo, in December preceding, that he must remove, that was sufficient warning, as no regular action of removing or formal warning was necessary in removings from urban tenements, and craved Sligo might be examined as to the fact of his being told, in December, that he must remove from his shop, and his agreeing to do so.

The Magistrates examined Sligo, who acknowledged that Tait had told him, in December, that the shop was let to another; but denied that ever he agreed to remove, or promised to remove. Tait *insisted* for a proof, to shew that Sligo had taken another shop, and given reason to believe that he would remove; which proof the Magistrates allowed, before answer. Sligo objected to the proof as incompetent and irrelevant, as no regular action of removing had been brought, or warning executed, 40 days before the term; and applied to this Court by advocation.

In the mean time, the proof was taken, and advised by the Magistrates, who ordained Sligo to remove; but a sist on the advocation being obtained, prevented the interlocutor of the Magistrates from being carried into execution; and afterwards, on advising the advocation with answers, &c. June 24, 1766, the LORD GARDENSTON ORDINARY refused the bill.

Pleaded, in a reclaiming petition, Though in removing from tenements within burgh, warnings, with all the solemnities required by the act 1555, are not necessary; yet, to prevent every removing from becoming an arbitrary question, there are certain established forms necessary in removings from urban tenements; such as having the door chalked by a burgh-officer, or an action brought against the tenant 40 days before the term. And, in support of this plea, the following authorities were referred to; Sir Thomas Craig, Lib. 2. Dieg. 9. § 9.; Lord Stair, B. 2. Tit. 9. § 40.; Lord Bankton, B. 2. Tit. 9. § 52.;

Mr Erskine, B. 2. Tit. 6 § 20. Waugh *contra* Abercromby, March 1680, No 71. p. 13830, and act of Parliament 1690. cap. 39.

No 105.

Answered for Tait; The formalities necessary to be observed in removings from rural tenements, are not requisite in urban ones. It is sufficient in the latter, that the material purpose is answered, namely, the giving timeous notice to the tenant to provide himself in another house, which was done in the present case, by the notice given the petitioner by the respondent in December, several months before the term of removing. The formalities requisite in warnings from urban tenements, depend on custom, not being regulated by any statute. In some burghs, particularly Edinburgh, the formality of a town's-officer chalking the tenant's door has been commonly used in warning, which probably has led Sir Thomas Craig, Lord Stair, and Lord Bankton, to mention the interposition of a town-officer, as a solemnity requisite to warnings within burghs. It has been found, that the order of a Magistrate is not necessary to authorise the officer to warn; and that the verbal order of the proprietor is sufficient; 24th June 1709, Barton *contra* Duncan, No 75. p. 13832. which proves that the essential point is the tenant's getting notice 40 days before the term; and whether such notice is given by a town-officer, or the proprietor, appears to be altogether immaterial.

'THE LORDS adhered.'

For Tait, *David Rae*. For Sligo, *Alex. Elphingston*. Clerk, *Tait*.

Fol. Dic. v. 4. p. 224. Fac. Col. No 43. p. 76.

1781. *July* 10. JAMES JOLLIE *against* ROBERT STEVENSON.

No 106.
Warning to remove from a dwelling-house.

MR JOLLIE was proprietor of a dwelling-house, situated near Picardy, in the suburbs of Edinburgh, in which Stevenson was his tenant. Forty-one days before the term of Whitsunday, Jollie caused a burgh-officer of the city to warn Stevenson to remove; and this warning the officer performed in the manner of chalking the door, having afterwards reported his proceeding in a written execution. Jollie next brought an action before the Sheriff for having Stevenson ordained to remove; which coming into the Court by advocation, it was

Pleaded by the tenant; It is indeed admitted that the statute 1555, cap. 39. ought not to be applied to houses within burgh. This exception has arisen from uniform and inveterate custom. But the rules prescribed by the statute admit no other limitation which does not proceed from necessity. Thus, though the particular solemnities relative to lands, are inept with respect to a dwelling-house, yet all the other requisites of the act are equally applicable to such houses as are not situate within a burgh, as they are to lands. This distinction is laid down by Mr Erskine, B. 2. Tit. 6. § 47. ; and by Lord Bankton,