was a warning necessary, on the part of the proprietor, to remove him from the farm. No 87.

Whatever may be the law when the tenant pays an adequate tack-duty, the case is very different here, where the rent is one merk instead of 200, which is the real value of the farm. This can by no means be looked upon as a tack, but rather as a right of liferent. Jean Tennent possessed the liferented lands herself; and therefore, as she died before the crop was sown, her executor had nothing to claim; and as the liferenter's right was totally at an end by her death, the fiar might enter into possession without the necessity of a warning.

"THE LORDS found, That there was no necessity for a warning in this case; and therefore assoilzied, and decerned."

Act. Ja. Dundas. *Alt. Macqueen.* *Clerk, Justice.*

P. M. *Fac. Col. No 214. p. 388.*

1767. December 15.

ANDREW WAUCHOPE of Niddery *against* ARCHIBALD HOPE.

MR HOPE having acquired right to a tack of the coal of Niddery, which expired at Martinmas 1767, Mr Wauchope, in spring that year, executed a warning against him, and brought a process of removing; but the warning having been informal, Mr Hope was assoilzied. Mr Wauchope having brought another process of removing in October, not founded upon the warning, "The Sheriff sustained the defence pleaded for Mr Hope, of the pursuer's having neglected to take the proper steps for getting him removed, either in terms of the act of Parliament, or act of sederunt, and assoilzied." No 88.

The act 1555, with regard to warnings, does not apply to coal-works.

See No 55. p. 13820.

Mr Wauchope presented a bill of advocation, which, with the answers, was taken to report by the Lord Ordinary.

Pleaded for the pursuer; That the act 1555 only applies to rural subjects. Prior to the act, removings from lands were very summary. The proprietor broke a wooden spear before the tenant's door, and told him he was to remove. This might have been done upon the term-day, and followed by a *brevi manu* ejection, which often have brought great distress and inconvenience to tenants of lands. It was to obviate this that the statute was enacted. Hence, the statute has been considered by all the writers on our law as respecting rural subjects only; Craig, L. 2. D. 9. § 18.; M'Kenzie's observations; Stair, B. 2. T. 1. 9. § 39. and 42.; and Lord Bankton, v. 2. p. 110. It is also upon this construction of the statute that it has been found not to apply to removings from towers and fortalices, Lady Salton *contra* Livingston, quoted by Lord Stair, from soap-works, (See APPENDIX.); November 21. 1671, Riddel *contra* Zinzan, No 67. p. 13828. from houses in the country; 11th March 1756, D. of Queens-

No 88. berry *contra* Telfer, No 85. p. 13843.; 19th December 1758, Lunden *contra* Hamilton, No 86. p. 13845.; and there is one case mentioned by Lord Stair, B. 2. Tit. 9. § 38. where it was found not to apply to a coal-work; Laird of Woolmot *contra* Niddery, (See APPENDIX.) Indeed there seems less reason for extending it to coal-works than any of the other cases. Tenants of houses may be put to very great inconveniencies by being removed or ejected without a warning. In soap-works, the tenant may have quantities of soap and materials on hand, with a store of casks, and other utensils, so that it may be a very great hardship upon him to be removed, when unprovided of a place whither he may transport these, and have them safely lodged. But, in a coal-work, not only the machinery, but even the persons who work at the coal, belong to the proprietor of the coal; so that the tacksman has nothing to remove. He has only to desist from working the coal.

Answered for Mr Hope; The statute is quite general, and requires warning, according to the forms therein prescribed, against the tenants of all possessions whatsomever. As there can be no doubt that coal-works are comprehended under the words, so they seem likewise to fall under the meaning of the statute. The purpose of requiring these formalities in warnings, was to prevent the inconveniences to tacksmen of every kind, by being obliged to quit precipitantly the subjects of their several tacks. The tacksmen of coal-works, besides the bound coalliers, must have a number of other servants, and houses for their servants, as is the case with the defender. The inconveniencies meant to be obviated by the statute, therefore, must affect the tacksman of coal-works as much as the lessees of any subject whatever.

The pursuer *alleges* the statute ought to be confined to rural subjects. If by these is meant subjects connected with land which require the labour and industry of men to be bestowed upon them, and produce a succession of *fructus naturales*, a coal-work must be allowed to be a rural subject as much as any. If by a rural subject is meant what is called a farm, this is directly in the face of the satute, which expressly mentions mills and fishings. In any view, a coal-work is as much a rural subject as any of these.

The defender's construction of the statute is confirmed by the universal sense of the country. It will not be denied that it is the invariable practice to use warnings in the form prescribed by the statute against the tacksman of coal.

None of the decisions quoted for the pursuer are strictly analogous to the present, except that of Woolmet *contra* Niddery, which appears to have proceeded upon a wrong *ratio decidendi*. Hope, by whom it is collected, says, "It was so found, because, in coal-works, no terms are considered, but the fruits are reaped daily." This would apply equally to the case of mills; as to which, however, there is no doubt that a warning is necessary. It is submitted, therefore, whether the authority of this single decision ought to have more weight than the words of the statute, and the sense of the country with regard to its meaning, appearing from the universal practice.

THE COURT were of opinion, that the statute did not take place in removings from coal-works, and that no more was necessary than to give timely notice, which had been done in this case. No 88.

"They remitted to the Sheriff to decern in the removing."

Act. *Rae.* Alt. *Sol. Dundas.*

A. R. *Fol. Dic. v.* 4. *p.* 223. *Fac. Col. No* 69. *p.* 221.

1793. *March* 1. DONALD CAMPBELL *against* JOHN JOHNSTON.

No 89.
Found sufficient that the precept of warning was affixed to the door of the church-yard.

IN October 1773, John Johnston obtained a lease of a farm in Argyleshire, "for the space of nineteen full and complete years and crops from and after the term of Whitsunday last bypast, when his entry commenced to the houses, grass and pasturage; and, as to the arable land, is to be and commence at the term of Martinmas next to come in the present year."

The precept is valid, although the tenant is warned to remove at the separation of the crop from the ground, instead of Martinmas.

The lease as to the grass, &c. expired at Whitsunday, and as to the arable ground, at Martinmas 1792. On the 31st March 1792, Captain Campbell his landlord executed a precept of warning against him on the statute 1555, c. 39.

A copy of the precept was, on a Sunday, forty days before Whitsunday, affixed to the door of the church-yard which surrounds the church of Campbeltown.

The precept warned Johnston to remove from the houses, &c. at Whitsunday, and from the arable lands at the separation of the crop from the ground.

A summons of removing was soon afterwards executed, which, after narrating the precept, proceeds thus: "And albeit it be of verity that the complainer has oft and divers times desired, &c. to leave the same void and redd, at the said term of Whitsunday, to the effect above mentioned;" and then concludes, "That Johnston shall be decerned to remove at the said term."

The Sheriff decerned against the tenant, who, in an advocation,

Pleaded, 1*mo*, The directions of the statute 1555, which was introduced, in order to check the arbitrary conduct of landlords, must be strictly obeyed. It requires that the precept should be read in the church, and a copy of it affixed to the most patent door of it; neither was done in the present case *; and where solemnities are introduced by statute, all equivalents are rejected; Stair, B. 2. T. 9. § 43.; Bankton, B. 2. Tit. 9. § 55.; February 1684, Threapland against Strachan, No 99. p. 3756.; 24th January 1782, Ranking of the Creditors of Jarvieston, No 151. p. 3797; 25th February 1783, Gordon against Burnet, *infra. h. t.*

2*do*, The warning is null, as requiring the tenant to give up the possession at a period when he was not obliged to remove; 6th March 1754, Earl of March against Dowie, No 84. p. 13843. He did not enter into possession of the arable land till Martinmas, and was entitled to retain it till the return of the same

* The defender offered to prove that the precept was not read even at the door of the church-yard.