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.

No 89. term in the year in which his lease expired. The crop is generally reaped in August and September. There is no reason why he should be deprived of the benefit of the after grass.

3*tio*, The summons concludes, That the tenant shall be decerned to remove at Whitsunday, and is therefore inconsitent, both with the lease and precept of warning.

Answered, 1*mo*, The church of Campbeltown has four doors, and it is not easy to say which of them is the most patent; but it is surrounded by the church-yard, which has only one door, and upon it notifications of every sort are in practice affixed.

2*do*, The object of the statute was to prevent landlords from arbitrarily removing their tenant's, without giving them sufficient warning of their intention. As this object has been completely attained in the present case*, critical objections to the words of the precept will not be listened to.

The crop is seldom off the ground before Martinmas, so that the tenant suffers nothing by the alleged irregularity of the warning. At any rate, all the tenant could ask, was liberty to continue in possession till Martinmas.

Besides, in rural tenements, especially those which are chiefly fitted for pasture, and in highland districts, Whitsunday is the proper term of removing, though the tenant is allowed to reap the crop, which is supposed to have been sown by him in spring.

3*tio*, The summons of removing narrates the precept; and although in the last sentence, when taken by itself, it seems to be at variance with it, when the whole is considered, there is no discrepancy.

Replied; When there is no lease, or when it fixes on Whitsunday and the separation of the crop, as the terms of entry and removal, it may perhaps be true, that Whitsunday is the legal term of removing. But that cannot be the case where it is agreed between the parties, that the tenant shall have, and where he pays a rent, for possession during a certain number of complete years, commencing from Martinmas.

THE LORD ORDINARY pronounced the following interlocutor: Finds, "1*mo*, That this process of removing is informal, as the warning is to remove at the separation of the crop, whereas, by the terms of the tack, it is to be at Whitsunday for the grass, and Martinmas for the arable lands; and the summons of removing is both disconform to the tack and the warning, as it concludes for removing at the Whitsunday, without making any distinction between the grass and arable lands; 2*do*, That the conclusion of the removing is materially as well as formally wrong, as it deprives the tenant of a crop which he might have sown and reaped on the arable land, such as bear, pease, or turnip, betwixt the Whitsunday and the Martinmas, the term of the removing from the arable land by the tack."

* Besides the precept executed on the 31st March, a summons of removing on the act of sederunt 1756, had been executed on the 19th and 20th of the same month. This summons, however, was not before the Court.

No 89.

The Court, at advising a reclaiming petition and answers, were not moved by the first objection; but, upon the others, there was some difference of opinion.

Tenants, it was *observed*, must have sufficient warning to remove; but frivolous objections must not be laid hold of to injure the interest of the landlord. Whitsunday was, in this case, the proper term of removing; though the tenent was entitled to the ensuing crop, which, in that part of the country, is not separated from the ground till very late in the year. He therefore suffered nothing by the terms of the precept. The summons of removing, if faulty, may be amended.

The Lords altered the interlocutor reclaimed against, and found, That the defender must immediately remove.

Lord Ordinary, *Monboddo*. Act. *Arch. Campbell, junior*. Alt. *Montgomery*. Clerk, *Menzies*.

D. D. *Fol. Dic. v.* 4. *p.* 223. *Fac. Col. No* 42. *p.* 86.

1794. *December* 13.

Mr Baron Gordon *against* The Representatives of Robert Michie.

No 90.
The heirs of a tenant for life may be removed summarily between terms.

Mr Robert Michie, minister of the parish of Clunie, at Whitsunday 1750, entered into possesssion of a farm, on a lease, to last 'during all the time of 'his incumbency' in that parish.

Mr Michie remained minister of Clunie, and possessed this farm, till his death, which happened on the 15th June 1794.

Mr Baron Gordon, the landlord, did not dispute the right of his Executors to the crop on the ground, and, as a matter of favour, he allowed the use of the grass for some time after the death of the tenant. Considering himself, however, as legally entitled to immediate possession of the farm, he, after giving the Representatives of the deceased previous notice of his intention, on the 26th September, presented a petition to the Sheriff, praying that they might be ordained immediately to remove from it.

The Sheriff, on the 15th October, ordered them to remove in 14 days.

By this time, the Representatives had paid the rent for crop 1794.

They afterwards presented a bill of advocation against the judgment of the Sheriff, which, having been refused, they, in a reclaiming petition,

Pleaded; A tenant is entitled to continue in possession after the period stipulated in the lease is completed, until he is regularly warned to remove; and it makes no difference whether continuance of possession is claimed by himself or his heir. A tenant for life has even higher powers than an ordinary lessee, and in so far as there is any difference between the situation of their heirs, the heir of the former is more entitled to favour as in his case the duration of the lease is altogether uncertain, and will generally be put an end to unexpect-