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 Ras.* 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,

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,