

*Pleaded* for the pursuers, That, in the present (circumstantiated) case, no argument can be founded on the statute, albeit no warning was used 40 days preceding Whitsunday 1739, in regard that the warning, upon which this removing is founded, is certainly 40 days before the term of Whitsunday 1740, and, of consequence, sufficiently supports the same with respect to the removing from the mansion-house, office-houses, and slent in the haugh, at that term; and, if that is so, the defender must of consequence remove from the park, garden, and dovecote immediately; because it is evident, from the whole clauses of the tack, that the house is what appears to be principally set, and the yard or park adjacent thereto, but as accessories to, or pertinents of the same. Here then is a set, not of a *prædium rusticum*, where the house was for the conveniency of labouring the ground, but of a *prædium urbanicum, habitandi causa*; and, therefore, since the warning from the house is unexceptionably good, the exception to it, with respect to the accessories, must go for nothing.

THE LORDS found, That this case fell under the act 1555, anent the warnings of tenants, and therefore sustained the objection to the warning.

*G. Home, No 146. p. 251.*

1742. *January 28.* EARL OF DARNLAY *against* CAMPBELL.

WHERE a tacksman of feu-duties had, after expiry of the tack, continued to possess by tacit relocation, it was found not necessary for the granter of the tack, intending to remove him, to use a formal warning, but that any intimation of the granter's will, to discontinue the tacit relocation, was sufficient.

*Fol. Dic. v. 4. p. 223. Kilkerran, (REMOVING.) No 3. p. 481.*

1743. *February 22.* HUGH EARL OF MARCHMONT *against* JOHN FLEEMING.

ANNO 1725, the late Earl of Marchmont let a tack of several mills, &c. to James Rae, and his heirs, secluding assignees, for the space of seven years, and, in the 1733, he renewed the lease in the same terms. On the 22d of August 1741, Rae renounced this lease, upon which Lord Marchmont granted a new lease to John Hunter of this possession, to commence *quoad* the mills at the Lammas preceding, and *quoad* the lands at the Martinmas thereafter.

When Hunter came to take possession, John Fleeming opposed it, as having a subset from Rae of the mill &c. of which he had been in possession many years. Whereupon the Earl lodged a complaint against Fleeming before his baron-bailie who decerned him to remove from the mill against the 28th of the said month

No 80.

No 81.

No 82.

It is not necessary to warn a subtenant who possesses under a tacksman, whose lease excludes assignees; nor to summon him to remove on six days.