that being an extraordinary director was no ground of declinator. It was said by Kilkerran, that as he was a proprietor, and as he was of opinion, that if any declinator lay, it was founded on being proprietor, he also desired the judgment of the Court how far he could vote. ARNISTON gave his opinion, that the objection lay upon being proprietor; and that if the declinator against the proprietor was repelled, so should that of being director, *et vice versa;* but that he was of opinion, that the declinator to a proprietor was good, unless there lay such objection to so many of the Court that a quorum would not remain, in which case, the Court behoved *ex necessitate* to judge. *Ita* also *Elchies:* but, upon a vote whether either *Royston* or *Kilkerran* could vote, it carried by great plurality to repel the declinator.

Vide Elchies; *Voce Jurisdiction,* No. 50.

1738. *December* 1. GRANGER *against* HAMILTON.

HAMILTON set a tack to Granger, of the lands of Kype, for nineteen years, by which the tenant's entry to the arable lands was declared to be at Martinmas 1728, and to the houses and grass, at Belton 1729, with this provision, *inter alia,* " that it shall be lawful to, and in the power and liberty of the said John Hamilton, by himself, his servants or family, and no otherwise, to enter to the possession of the said haill lands, &c. at any legal terms after the expiration of the first ten years, and that the said tack shall from thenceforth expire, and become void and null; and the said J. H. his entry to the possession of the said houses, &c. is hereby declared to be as follows, viz. to the arable lands at Martinmas, and the houses, &c. at Belton next thereafter, he being obliged to make lawful premonition, in either of the cases foresaid, to the said James Granger, of his entry to the said lands, in presence of a notary and witnesses, forty days before the term of Whitsunday preceding his entry thereto."

The landlord executed a warning against the tenant on 2d Nov. 1737, and also intimated to him, before a notary and witnesses, to remove from the arable lands at Martinmas 1738, and from the houses and grass at Belton 1739. A decree of removing having afterwards been obtained by the landlord, it was *objected* to the warning, in a suspension:

That the warning was irregular, in so far as the Act 1555 implies that the warning should be made within the year.

ANSWERED, 1*mo,* The act makes no limitation: it says that warning is to be made *at any time within the year, forty days before the feast of Whitsunday,* which is the same as if it had said at any time of the year, provided it is not nearer Whitsunday than 40 days. There is no limitation to make the warning in the same year with the removal, rather than the year before; and it is an advantage to the tenant to get earlier notice. 2*do,* If the law had intended to limit the time to a year, that year behoved to be computed *retro,* not from the conventional term of removing, but from the term of Whitsunday preceding it; for it is settled by decisions, that whatever be the conventional term of removing, the

warning must be given forty days before the Whitsunday preceding. It would be absurd to suppose, that the year within which the warning ought to be given, if such were limited by the statute, should be computed *retro* from the conventional term of removing, which might be at a great distance from the term of Whitsunday; and, indeed, at this rate, there might in some cases be no room for a warning at all.

"The Lords *repelled* the objection to the warning."

The following is Lord KILKERRAN's note of what passed on the Bench.

"E. was *at first of opinion*, that the words, *within the year*, in the Act of Parliament, were to be understood within the year of God. But upon an observation made by himself, that when this Act of Parliament was made, the year began on the 25th of March, as it is now in England, and was with us till the year 1600; but it might then have happened, as Whitsunday was then a moveable term, it might have happened that there were not forty days within the year of God preceding the Whitsunday, and therefore he dropped that notion.

"Before this observation had occurred, F. K. had argued, that, *within the year*, was within the twelve months; so much the words would bear, and had a reasonable meaning; for suppose a warning given two years before, it might be forgot, whereas, there would not be sense in the statute, if supposed to limit the words to the year of God, that a warning should not be good if given upon the last day of December, to remove at the Whitsunday following.

"D. A. Without entering into the dispute, whether the year of God or the twelve months was meant, insisted that *sive sic, sive secus*, the warning was void, for that it was not within a twelvemonth of the first term of removal.

"F. K. That the time from which the twelve months was to be computed, was not the term of removal, but the Whitsunday before which the warning was made; and so the far greater part of the Court thought; and, therefore, sustained the warning as above: but, upon farther reflection, F. K. after the matter was over, thought that the opinion of D. A. was the just construction of the Act of Parliament, and that the objection to the warning should have been sustained."

N. B.—This case is reported by Elchies, (*Removing*, No. 3.)

1739. *January* 18. ISABEL and SARAH M'KIES,—*Petitioners*.

"JANUARY 18, 1739, This bill, after the fact was explained by the Ordinary, the Lord ARNISTON, was refused. As to the particular facts, it is to no purpose here to note them.

"The only thing worth remarking is, that the Ordinary, and with him the Court, were of opinion, agreeable to what had been found in former cases, that where a disposition is challenged as granted, without an onerous cause, and that anterior bonds are produced for instructing thereof, there is no necessity also to instruct the onerous cause of such bonds; though, had these bonds been the deeds quarrelled, the onerous cause of them behoved to have been instructed."