

## S E C T. IV.

At what time.

1623. July 24. KER against FOULIS.

No 93

IN an action between Sir William Ker and Mr Robert Foulis, for payment of the mail of a chamber within Edinburgh, the LORDS found, that a possessor of any land or dwelling-house within burgh, may remove and give over the same, as well before the term of Martinmas, as before Whitsunday. Likeas, they found that a warning may be made by the heritor, or others having right to the land within burgh, to remove therefrom, as well before Martinmas, as before the term of Whitsunday.

Act. Stuart.

Alt. per se.

Clerk, Hay.

Fol. Dic. v. 2. p. 337. Durie, p. 75.

1626. July 8. FOULIS against \_\_\_\_\_.

No 94.

GEORGE FOULIS having set a tack to a tenant in Ravelstone, of some of his lands there, for the space of 16 crops after his entry, which by the tack was appointed to be in September, and to expire in September after the said space, makes warning before the Whitsunday in that year, wherein the tack was to expire at September after that Whitsunday, to the tenant to remove; and after the Whitsunday raiseth summons, and pursues the tacksman to be decerned to remove at the said month of September thereafter. The tenant compearing *alleged*, That the warning nor action of removing could not be sustained, being made before the time of the expiring of his tack, before the expiring whereof he could not have been warned; far less could action of removing have been intended against him, until his tack had been ended. THE LORDS found, that warning might have been made before Whitsunday, albeit the tack expired not till September thereafter; but that the defender could not be pursued to remove till the term of the endurance of the tack was run out, although the action and summons concluded not to remove before September was past, neither craved a present removing; but the LORDS not the less sustained the warning made before the ish of the tack, to the effect, that after the ish he might seek his removing, and pursue the same; otherwise, if warning should not be made till the Whitsunday following after the tack, the pursuer might be prejudg.

At whatever term the tack expire, the warning must be made forty days before the preceding term of Whitsunday.

No 94.

ed of a year's profit of his land, and the defender might bruik the same a year longer than he had right, and yet not be subject in any other duty than his tack-duty, which were unequitable.

Act. *Foulis.*

Alt. ———.

Clerk. *Gibson.**Fol. Dic. v. 2. p. 337. Durie, p. 211.*

No 95.

Found in conformity with the above.

1628. *December 16.*INGLIS of Murdiston *against* His TENANTS.

IN a removing, Murdiston against his Tenants, a tack being set to the defender for certain years, the last whereof expired at the term of Martinmas, the LORDS sustained the warning made to the tacksman to remove, and this action upon that warning, albeit the warning preceded the feast of Whitsunday before that Martinmas, at which term the tack expired, so that at the term when the warning was made, the tack was standing un-runout; notwithstanding whereof, the warning was allowed, seeing, albeit it was made before the Whitsunday, and before the out-running of the tack, yet it was made to remove at the Martinmas, and the action was not intended while Martinmas was past, for otherwise the tacksman would have bruiked a year longer than the tack lasted.

*Fol. Dic. v. 2. p. 337. Durie, p. 409.*

\*\*\* Spottiswood reports this case :

THOMAS INGLIS of Murdeston having made warning to his Tenants before Whitsunday 1628, pursued a removing upon it. *Alleged* by one of the defenders, That the time of the warning he had tacks to run, which did not expire till Martinmas following, and therefore he ought not to be decerned to remove till he were of new warned. THE LORDS sustained the warning notwithstanding of this allegiance, because the action was not intended till after Martinmas, at which time the defender's tack was expired.

*Spottiswood, (REMOVING.) p. 286.*

\*\*\* Auchinleck reports the same case :

A WARNING may be made before Whitsunday to a tenant to remove at Martinmas thereafter, if the tenant's tack end at Martinmas.

*Auchinleck, MS. p. 247.*