

S E C T. II.

Who must be called.

1565.

JOHN LAING *against* N——.

IN a removing pursued by Mr John Laing parson of Luss, against N., *alleg- et*, That he was not lawfully warned, he being only a sub-tenant, and the principal tenant of whom he had the set not warned. *Replied*, That the principal tenant's tack was run out, so that he was not necessitated to warn him, he neither having tack, nor occupying the ground. *Duplied*, That the tenant who had the tack not being warned, was understood to possess *per tacitam relocationem*, ever till he were warned; neither might the sub-tenant *intervertere possessionem domini sui eo inscio*. THE LORDS found the warning not lawful, because the principal tenant was not warned.

No 40.

In a removing of a person holding from a principal tenant, the principal tenant must be called; but see No 46. and No 48.

Fol. Dic. v. 2. p. 338. Spottiswood, (REMOVING.) p. 284.

* * * Maitland reports this case:

IN an action of removing moved by John Laing, parson of Luss, against James ———, desiring him to remove from his glebe and kirk-lands of ———, who *excepted*, That he was not lawfully warned to remove, he being a sub-tenant, and the tenant of whom he had the tack set not being warned. It was *replied*, That the tacks of the said tenant were forthrun, and so he was not tenant to the said parson, because neither had he tack, nor yet occupied the ground. It was *answered*, That the tenant who once had tack not being warned to flit, had *tacitam relocationem*, and the sub-tenant might not *intervertere possessionem domini sui*, albeit he would have made payment to the said parson. It was found that the principal tenant behoved to be warned, or else this warning could not be lawful.

Maitland, MS. p. 201.

1627. February 17.

WILSON *against* LINDSAY.

No 41.

IN an action of Wilson against Lindsay, for removing from a waste ground and some lime-pots and houses, the LORDS repelled an exception proponed upon he defender's own infeftment of these same lands, and his author's infeftment likewise standing clad with 40 years possession; because the pursuer qua-