

## 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.