

1652. *February.* DOUGLAS *against* TENANTS OF KINGLASSIE.

No 32.

A DECREE for poinding the ground may be obtained before the term of payment, superseding execution till after the term. See No 30.

Fol. Dic. v. 1. p. 538. Gilmour. Stair.

* * * This case is No. 10. p. 1282. *voce* BASE INFERTMENT.

1681. *June 16.* LADY CHATTO *against* HALYBURTON.

No 33.
A decret of removing sustained, tho' pronounced before the term.

THE Lady Chatto having obtained decret of removing against Mr Thomas Halyburton, tenant in Over-Chatto, who having given in a bill of suspension, the cause was ordained to be discussed upon the bill. The suspender insisted upon this reason, that he was warned to the term of Whitsunday last; and, therefore, could neither be pursued nor decerned till the term were past; whereas, the decret is before the term, being pronounced upon the 17th day of May last; so that the summons of removing could not be relevant, and the defender ought to have had a competent time to make his defence after the term was past. It was *answered*, That the summons was just and relevantly libelled, for as a summons of removing may be, that he was warned, and the term to which he was warned was past, and, therefore, craving him to be decerned instantly to remove; it might also be relevantly libelled, that he was warned; and, therefore, ought to be decerned to remove at the term, which is both just and fit; for, otherwise, lands cannot be securely set, that both the master and the new tenant may be certain, by clearing all the pretences of the warned tenant, that, upon the decret, he may be by letters and precepts of possession dispossessed, and the new tenant entered: Therefore, the LORDS sustained a decret of the same nature, in the case of Riddel against Zinzan in Leith, November 21st, 1671, *voce* REMOVING.

THE LORDS sustained the decret of removing.

Fol. Dic. v. 1. p. 538. Stair, v. 2. p. 875.

* * * Fountainhall reports this case.

THE Lady Chatto having obtained a decret of removing against a tenant, and a bill of suspension being presented of it, upon these reasons, *imo*, The citation before the Sheriff was only upon 24 hours; this was repelled, in regard there was no reduction; *2do*, That both the summons and decret of removing were before the term of Whitsunday; whereas, the constant stile and form of removings is, that the 40 days being expired, and the term past, yet