

No 63.

\* \* Auchinleck reports this case :

THE Laird of Rowallan intents a declarator against the relict and bairns of Boyd, who had a tack of him all the days of his lifetime, for payment of L. 6 and his personal service upon horseback when he should be required, to hear and see them decerned to remove. The tacksman deceased about Martinmas. It was *excepted* by the defenders, that seeing the defunct was tacksman, his relict and bairns could not be removed without a warning. It was *replied*, That seeing liferenters by infestment may be removed immediately after their decease, much more a tacksman. THE LORDS found the exception relevant.

*Auchinleck, MS. p. 121.*

1630. December 18.

RAMSAY *against* L. CONHEATH.

No 64.  
A summary removing from a manor house on six days, was sustained without formal warning or precept.

ONE Ramsay, son to the L. Cockpen, pursuing the L. Conheath, by a summons upon six day's citation, to remove from the house of —, without any preceding warning, or other order of removing used before the term of Whitsunday; and it being *alleged*, That that order so summary without warning could not be sustained, seeing the defender *alleged*, that this house was not a tower or fortalice, wherein such summary actions are only sustained, and had neither fosse, nor barmkyn-wall about it, nor battelling, but was only an ordinary house. THE LORDS nevertheless sustained the order, and found no necessity of a warning, seeing this was an house not necessary for labouring the ground, but was a great house, bigged for the heritor's proper use. So the 8th of November 1631, a supplication at the L. of Whittingham's instance, against the Lady, for summary charges of horning against her, to deliver the place of Whittingham, was granted, without necessity to pursue therefore; and before, the like was done also by bill to the L. of Halton.

*Fol. Dic. v. 2. p. 335. Durie, p. 549.*

\* \* \* Observe, in the above case, are mentioned two other cases, Whittingham, and Halton.

1667. January 24.

EARL of ARGYLE *against* GEORGE CAMPBEL.

No 65.  
Warning sustained at an old kirk, tho' divine service was performed at a new one.

THE Earl of Argyle pursues George Campbel, to remove from certain lands, who *alleged* absolvitor, because the warning was null, not being used at the right parish kirk, where divine service at that time was accustomed. It was *answered, non relevat*, unless it were *alleged* that the other kirk were erected by Parliament, or Commission thereof, and that thereby the old parish was suppressed and divided; *2do*, Though that were *alleged*, it ought to be repelled, because it is offered to be proved, that all warnings and inhibitions have been used at the old parish kirk, and particularly by the defender himself.