

LORDS decerned the tenant to remove after his corns are win, but sustained the action of violent profits upon that warning, made by the decret of reduction.

No 62.

*Auchinleck, MS. p. 191.*

1630. February 13. Laird ROWALLAN against The Relict of BOYD.

THE Laird of Rowallan having set a liferent tack personal to one Boyd, which tacksman dying before Martinmas, after his decease Rowallan immediately raises summons against the relict, for removing from the lands, and to hear it found, that he may enter to the lands; and the relict *alleging*, That this summary order cannot be sustained against her, but that she ought first to be warned before the term of Whitsunday, as use is in all other ordinary removings; the LORDS found, that this summary order of removing ought not to be sustained, and that the relict had no necessity to remove, until the time that she were warned before Whitsunday, conform to the order in other actions of removing; for albeit her husband had only a tack for his lifetime, yet the Lords found this cause to differ from a liferenter's right bruiked by infestment; in which case the fiar, after the liferenter's decease, gives no warning, but may then summarily remove, and enter to the possession of the land liferented, the same being laboured with the liferenter's own goods; albeit, if the liferenter had set the lands to tenants, *eo casu* the fiar could not remove the tenants summarily, without warning, but that then he had right to the duty, for which the lands were set by the liferenter; but this case of a liferent-tacksman was not found alike, and so that the privilege of the fiar, when the liferent of the fee ceases, is not to be extended further than that case; for the relict of the tacksman was not found to be in a worse case; than if her husband had been a naked tenant without a tack, *quo casu* the order of warning ought to have been used; and this was found, albeit the liferenter possessed, and at his decease laboured the land with his own plough; and albeit the pursuer alleged, that the liferent-tack was set for personal service, of riding on horseback with the pursuer, which he alleged could not be performed by the relict, nor by any other person, whom she could furnish to ride with the pursuer, whom she could not choose to the pursuer, seeing he had chosen the person of whom he required the service by the tack, and no other could be substituted by her in his place; notwithstanding whereof the order was not sustained, but the relict was ordained to furnish a competent man to the pursuer, to ride with him, when he should require the same.

No 63.

Where a tacksman was bound to give service on horseback, could his relict and children be summarily removed?

Clerk, *Gibson.*

*Davis, p. 492.*

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.