1582. *February.* ——— *against* DUNBAR. No 52.

DAVID DUNBAR, son to the umquhile Guidman of Kilberche, was warned by ——— to flit and remove himself, and his goods and gear, from the dwelling-house of Kilberche. He *answered*, That he ought to have been lawfully warned forty days before the time, according to the act of Parliament. To which it was *answered*, That in so far as he was in possession only but *tutorio nomine*, that there mistered no other warning; for, if the pupil would start at his own hand, he could have no action against him; which allegeance was found relevant by the LORDS.

Colvil, MS. p. 353.

1584. *January.* CHALMERS *against* CRANSTON. No 53.

A forfeited person, tho' restored, *per omnia*, cannot summarily turn out the parties in possession, but must use a warning in common form.

MR DAVID CHALMERS having obtained the benefit of pacification, obtained letters upon the same, and charged one Cranston that was in possession by occupation of the glebe and kirk-lands appertaining to the Provostry of Crichton, to restore him to the actual and real possession of the same, by virtue of the pacification. The defender obtained suspension, whereof the reason was, that he could not be obliged to restore the said Mr David to possession, but to such as he had before the time of the forfeiture, which was only but to the taking up mails and duties, for as to the real and actual possession, the said Mr David had none, because the glebe and kirk-lands were set to umquhile Robert Ormiston and his spouse, in tack and assedation, and since syne the defender had obtained a new tack of Mr Adam Johnston, possessor of the benefice, and so was in possession *cum titulo aut saltem cum tacita relocatione*, and could not be removed; nor was not bound to restore the said Mr David to any real or actual possession, except he had been warned orderly, and put from his possession. To which was *answered* by Mr David, That Mr Adam Johnston, who was the defender's author, could not be said in any sort to stop the said Mr David from the real and actual possession of the said glebe and manse, *minus* the said defender, who had the right and title of the said Mr Adam, nam si propter Mr Adamum Johnston talis fuit, et eo minus illum esse oportet, and also the pacification bore, in express words, that he that gets the benefit of the same shall be restored, likeas he had never been forfeited; and concluded *restitutionem, et omni causa*, and Mr David, if he had not been forfeited, might, in the ordinary time, have warned, and obtained decree of removing against them. THE LORDS, for the most part found, that the reason of the summons was relevant, and that Mr David could not be decerned to have

No 53. any possession but such as he had the time of his forfeiture, and that the tenant of the ground ought to be warned before he be put from his real possession of the same.

Fol. Dic. v. 2. p. 355. Colvill, MS. p. 396.

1586. *July.* Mudie *against* Tenants.

Mr George Mudie warned certain tenants to flit and remove. It was *objected* against the warning, That it was not made according to the act of Par-
No 54. liament, in so far as the said tenants were not warned at the ground of the lands, because the words of the act are, 'personally, or at their dwelling-places, and at the ground of the lands, et sic hæc posterior particula at the ground of the lands," copulative ponitur. The Lords found the warning not good, by reason it bore not warning at the ground of the lands.

Fol. Dic. v. 2. p. 337. Colvil, MS. p. 409.

*** See a similar case, No 68, p. 13829. where the *ratio dubitandi* was, the tenant had been personally warned; and it was *pleaded*, That the act is alternative, either personally or at their dwelling-place, and at the ground of the lands, which two last make but one member, and are only to be used in case the tenant be not personally warned; but it was *answered*, The leaving a copy on a forked stick thrust in the ground, as use is, was separately required and useful, for thereby the sub-tenants, who need not be warned personally, were acquainted to remove with their masters.

1610. *December* 18. Laird of Preston *against* The Laird of Cockpen.

No 55. A coalheugh set in tack for diverse years to a liferenter for payment of a weekly quantity of coals and panwood, if the liferenter decease before the years be expired, the fiar may remove the tacksman upon a simple charge of six days to desist and cease, or shew a reasonable cause why, and will not be put to make warning at any ordinary term of Whitsunday or Martinmas.

Haddington, MS. No 2057.