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 infeftment 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; 2*do*, 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.

THE LORDS repelled the defence simply, unless the erection were alleged as aforesaid, and found in that case the reply relevant to elide the same. No 65.

Stair, *v.* 1. *p.* 430.

1669. *February* 16. ALEXANDER HAMILTON *against* HARPER.

No 66.
Warning by chalking the door, from a shop let in tack, not sustained at the instance of a singular successor.

UMQUHILE John Hamilton apothecary, having purchased a tenement in Edinburgh, to himself in liferent, and his son Alexander in fee; thereafter he borrowed 1000 merks from Thomas Harper, and gave him a tack of a shop in the tenement for the annualrent of the money. After his death, Alexander his son used a warning by chalking of the doors by an officer in the ordinary form; and he being removed, Alexander pursues now for the mails and duties of the shop from his father's death till the defender's removal; who *alleged* absolvitor, because he bruiked the tenement by virtue of his tack, et bona fide possessor facit fructus perceptos suos. It was *answered*, That the tack being but granted by a liferenter, could not defend after the liferenter's death, and could not be so much as a colourable title of his possession; 2*dly*, That he could not pretend *bona fides*, because he was interrupted by the warning. It was *answered* by the defender, That the tack was not set to him by John Hamilton as liferenter, nor did he know but he was fiar, being commonly so reputed, neither could the warning put him *in mala fide*, because there was no intimation made thereof to him, either personally, or at his dwelling-house, but only a chalking of the shop-door.

THE LORDS sustained the defence and duply, and found him free of any mails or duties, till intimation or citation upon the pursuer's right. Here the pursuer did not allege that the warning by chalking of the shop-door came to the defender's knowledge, as done by the pursuer.

Fol. Dic. v. 2. *p.* 336. *Stair*, *v.* 1. *p.* 606.

*** Gosford reports this case:

IN a pursuit for mails and duties at the instance of Alexander Hamilton against Harper shoemaker in Edinburgh as possessor of a laigh house within the said burgh, it was *alleged* for the defender, That he bruiked by virtue of a tack set by the pursuer's father for the annualrent of the 1000 merks lent by the defender, for which he had retention of the annualrent during the tack. It being *replied* for the pursuer, That his father was only a liferenter, and so the tack could not defend for the years subsequent to his decease. THE LORDS found that the pursuer's infeftment of fee being granted to him when he was a child, and *in familia*, and never any diligence done thereupon till four or five years after his father's decease, the defender was *in bona fide* to possess until he was lawfully warned and cited; and found, that albeit that the shop was a