No 49. fore the Sheriff, That he had not found caution for the violent profits, he *answered*, That he needed not, seeing the pursuer himself was in possession by the ejection. It was *answered*, That the Lord Duffus offered him to prove, that all he did was to put in some corns and plenishing in an out-house, long after the warning of the tenant that had taken the roum; and that he continued to possess all the rest of the house, and the whole land by his cattle, till he was legally removed; and neither the family nor the goods of the new tenant came in till then. It was *answered*, That the allegeance was contrary to the tenant's libel of ejection, bearing, that he was dispossessed both from the house and lands.

"The Lords considering that the tenant's was only positive, in ejection from the house, and had once acknowledged that he was not ejected from the land, they assoilzied from the reduction of the decreet of removing; but they sustained the action of ejection, and repelled the defences, as contrary to the libel, reserving to themselves the modification of the violent profits, and the other party to debate whether, after the decreet of removing, the tenant should have re-possession, or only the profits or damages.

Stair, v. 1. p. 377.

*** Newbyth reports this case:

The Lord Duffus having obtained a decreet of removing against William Dunbar, before the Sheriff of Murray and his depute, the decreet was suspended upon this reason, That William Baillie, now tenant to the Lord Duffus, and others in his name, having intruded himself in the possession at least before by the decreet of removing he was removed, and that he had an action against the Lord Duffus for the same; for which it was *answered*, That he opponed his decreet and warning, and albeit he was removed, as he was not, before the decreet, yet the same behoved to be extracted for securing the intrant tenant.

The Lords found the letters orderly proceeded in the removing, reserving the defender's action of ejection; and the ejection being likewise called, the Lords repelled the allegeance proponed for the Lord Duffus, in respect of the libel and reply, and assigned a term to prove; but, in regard the tenant was possessed, the Lords inclined not to re-possess him, albeit he should prove the ejection, but would turn the same in damage and interest.

Newbyth, MS. p. 62.

No 50.
Process of removing ought not to be sustained, unless the principal tenant is called.

1745. *January* 18.

Lockhart of Carnwath *against* Ogston and his Sub-tenants.

Mr Lockhart of Carnwath having set to James Ogston, writer in Edinburgh, a part of the lands of Walston, with power to him to subset the same

with the consent of the heritor, obtained a decreet of removing against the Sub-tenants before the Sheriff of Lanerk, of which a bill of suspension was presented, on this, amongst other reasons, That the principal tacksman was not called; the LORD ORDINARY "refused the bill;" and a reclaiming petition being presented, No 50.

"THE LORDS were of opinion, the Sub-tenants could not be removed, unless their author were called; and therefore remitted to the Ordinary to pass the bill."

Act. *Lockhart.* Alt. *Haldane.* Clerk, *Gibson.*

Fol. Dic. v. 4. p. 222. D. Falconer, v. 1. p. 77.

SECT. III.

Warning, in what Cases necessary.—How to be executed.

1549. *May* 28. RAMSAY of Denoon *against* STEWART.

No 51.
Though a tacksman cannot maintain his possession against the superior during the ward, yet he cannot be summarily removed, but must be warned in common form.

IN causa Domini de Dunoon contra William Stewart in Dunfermline casus erat talis. Umquhile Archibald Ramsay of Dunoon, father to John Ramsay, now Laird thereof, and pursuer in this cause, set *in anno* 1528, his lands of Castleland for nineteen years to the said Robert, with clause of warrandice of the said tack during the said space. An year thereof being run, the lands fell in ward in the King's hands, and their ward being disponed to the Laird of Rossyth and Overbarton, the said Robert proponed now again for tacks of the same, for the time of the ward, and so bruiked all the eighteen years, resting of his nineteen years tack, the said lands of the wardatar, for mails and duties allenarly contained in the said tack. The ward being furthrun, the Laird of Dunoon sold the lands from himself. The said eighteen years being by-past, or at least run for the most part, the said Robert called this John Ramsay, as heir to Archibald, to warrant to him the said eighteen years of the said tack, which he might not bruik, because of the ward; for the King, incontinently, that land came to him by ward and non-entry, at the next term removes the tenants, and keeps no tacks set of before, and his donatar has the same privilege by the practick of Scotland; the cause hereof is, the general act made by all the Barons in King James IVth's days, as is contained in his act of Parliament, granted to the King, and his successors; the marriages of all the heirs of ward-lands, and the profits thereof, during the ward; because his predecessors grant-