

No 94.

ed of a year's profit of his land, and the defender might bruik the same a year longer than he had right, and yet not be subject in any other duty than his tack-duty, which were unequitable.

Act. *Foulis.*

Alt. ———.

Clerk. *Gibson.**Fol. Dic. v. 2. p. 337. Durie, p. 211.*

No 95.

Found in conformity with the above.

1628. December 16.

INGLIS of Murdiston *against* His TENANTS.

IN a removing, Murdiston against his Tenants, a tack being set to the defender for certain years, the last whereof expired at the term of Martinmas, the LORDS sustained the warning made to the tacksman to remove, and this action upon that warning, albeit the warning preceded the feast of Whitsunday before that Martinmas, at which term the tack expired, so that at the term when the warning was made, the tack was standing un-runout; notwithstanding whereof, the warning was allowed, seeing, albeit it was made before the Whitsunday, and before the out-running of the tack, yet it was made to remove at the Martinmas, and the action was not intended while Martinmas was past, for otherwise the tacksman would have bruiked a year longer than the tack lasted.

Fol. Dic. v. 2. p. 337. Durie, p. 409.

*** Spottiswood reports this case :

THOMAS INGLIS of Murdeston having made warning to his Tenants before Whitsunday 1628, pursued a removing upon it. *Alleged* by one of the defenders, That the time of the warning he had tacks to run, which did not expire till Martinmas following, and therefore he ought not to be decerned to remove till he were of new warned. THE LORDS sustained the warning notwithstanding of this allegiance, because the action was not intended till after Martinmas, at which time the defender's tack was expired.

Spottiswood, (REMOVING.) p. 286.

*** Auchinleck reports the same case :

A WARNING may be made before Whitsunday to a tenant to remove at Martinmas thereafter, if the tenant's tack end at Martinmas.

Auchinleck, MS. p. 247.