

1633. February 16. HARPER *against* COCKBURN.

No. 14.

A comprising upon a denunciation after Whitsunday, though perfected by infestment before Martinmas, carries only right to the half of the rent for the crop on the ground ; and therefore an arrestment of that year's rent, though posterior to the denunciation, is preferable for the other half, though the whole, as being victual-rent, be not payable till between the Yule and Candlemas after the comprising.

Fol. Dic. v. 2. p. 457. Durie.

* * This case is No. 10. p. 139. *voce* ADJUDICATION.

1635. February 21. L. WEST-NISBET *against* L. SWINTOUN.

No. 15.
Miln-rent,
how it di-
vides ?

The L. West-Nisbet pursuing L. Swintoun, for the tack-duty of the miln of ———, which miln was set in tack to the tenant for certain years, by the umquhile L. Swintoun, to whom West-Nisbet was executor, for payment of 30 bolls of meal yearly for the miln and miln-lands, betwixt Yule and Candlemas yearly ; the entry of the tenant was by the tack appointed to be at Whitsunday, and so to continue from that Whitsunday to the next Whitsunday, and so yearly thereafter, till the expiring of the tack. The L. Swinton, setter of the tack, dies in the second year of the tack, after the Martinmas in that second year, and before Yule, which was the term appointed by the tack for payment of the tack-duty ; whereupon it being controverted before the Lords, whether West-Nisbet, who was executor to the defunct, or Swintoun, who was his heir, and heritor of the miln, should have that year's tack-duty, or, if it should divide betwixt them ; the Lords found, that the executor ought to have the whole year's tack-duty, and that the heir ought to have no part thereof ; albeit the heir alleged, that the least he could be found to have right to of that year's duty, behoved to be the just half thereof, because the first year of the tack behoved to rule the whole subsequent years, (as was agreed on betwixt the parties) and if Swintoun had died after the Martinmas in the first year, and before the term of payment, viz. before Yule, as he did the second year now controverted, the executor could never have had right but to the half duty, because the entry being at Whitsunday, the miln-lands could never have been tilled by the tenant, while the Martinmas thereafter ; for at the said term of entry, the crop was then sown, and pertained to the preceding tenant, and the entering tenant could not enter, while that crop was off the ground, which could not be till the Martinmas after his entry : Likeas, the miln libelled is but a winter miln, so that betwixt his entry thereto, and the Martinmas, whereat the heritor died, the tenant had not made any profit of the miln, seeing the whole profit thereof behoved to be in the winter after that Martinmas ; neither were the