

1758. December 19. JAMES LUNDIN of Drums, against JAMES HAMILTON.

THE question which occurred betwixt these parties was, Whether a regular warning was necessary to be executed forty days before Whitsunday, previous to any process of removing, against a tacksman of a house in the country? or, Whether the act 1555, anent warnings, does not apply only to the possessors of lands?

See Craig, Lib 2. D. 9. § 18.; Stair, Title TACKS, § 38.; Sir George Mackenzie, Observ. on said act.; Bankton, vol. 2. p. 110.; 21st November 1671, Riddel, No 67. p. 13828.

“THE LORDS unanimously found, that the act 1555 did not extend to houses in the country.”

Reporter, Lord Justice-Clerk.

Act. D. Grame.

Alt. Lockhart.

G. C.

Fol. Dic. v. 4. p. 223. Fac. Col. No 149. p. 266.

No 86.

Warning only necessary in removings from land, not from a house, though in the country.

1760. February 22. TENNENT and FRAZER against TENNENT of Westerinch.

JEAN TENNENT, possessed of a liferent-tack of lands, having died in December 1755, the proprietor, without warning her heirs to remove, entered at short-hand into the possession, which produced a process against him at the instance of the heirs, concluding that they were entitled to continue the possession until they were removed by due course of law; and also concluding damages against the proprietor for his violent intrusion into the land.

THE LORD ORDINARY having found, That the pursuers could not be lawfully removed from the possession without a previous warning; and having therefore found the defender liable in damages, the COURT, upon a reclaiming petition, altered the interlocutor, and assoilzied from the process. Jean Tennent could have no heir in a liferent-tack. Her tack ended with herself, and no person but the proprietor was entitled to apprehend the possession. There could be no occasion to warn Jean's heirs, if they had no title to possess. They could not even claim any part of the crop, because all the corn was sown after Jean's death.

Fol. Dic. v. 4. p. 222. Sel. Dec. No 161. p. 221.

* * * This case is reported in Faculty Collection :

JOHN TENNENT of Westerinch, granted a tack of part of his lands called the Glebe, worth about 200 merks a-year, to Jean Tennent, his cousin and house-keeper, during all the days of her life, for the yearly rent of one merks Scots; and he bound John Tennent his heir, by a disposition of the estate in his fa-

No 87.

Upon the death of a tenant having a liferent-tack, the proprietor may enter at short-hand, without giving any warning.