

1628. December 2. WHITEFORD against L. JOHNSTON.

In a removing, Mr Walter Whiteford against L. Johnston, by a compriser against the tenants, possessors of the comprised lands, the defenders alleging them to be tenants to the L. Johnston, to whom they had been in use to pay their duties for the lands libelled, diverse years before the warning and comprising, and which L. Johnston had tack or rental of the lands from the Lo. Harris, from whom the pursuer had comprised the same, at least who bruiked the same *per tacitam relocationem*, and he was not warned; this alleigance was not found relevant for the tenants, and it was not found needful to allege, that their said master had tacks for terms to run the time of the warning; but albeit his tack had been expired, he then bruiking, *per tacitam relocationem*, as it would defend himself in any other judgment, where he, as possessor, was not lawfully interrupted, so it was found, that it should defend his tenants until he was warned, that he may be heard to dispute thereon, albeit the L. Johnston was not actual nor natural possessor himself.

No 44.
A compriser must warn the author of the tenants, as well as themselves.

Act. Lermouth.

Alt. Cuninghame.

Clerk, Gibson.

Fol. Dic. v. 2. p. 338. Durie, p. 402.

* * * Spottiswood reports this case :

MR WALTER WHITEFORD pursued a removing against certain persons. Alleged for the defenders, That they were tenants by payment of mails and duties diverse years before the warning, to the Laird of Johnston, who had tack or rental of the lands libelled set to him by the Lord Harris, the pursuer's author, at least possessed *per tacitam relocationem*, which Laird of Johnston was not warned. Replied, Not relevant, except they would allege that Johnston had tacks or rental unexpired the time of the warning; for to say that he possessed *per tacitam relocationem*, was altogether irrelevant. THE LORDS sustained the exception as it was proponed for the Tenants *alternative*.

Spottiswood, (REMOVING.) p. 285.

* * * This case is also reported by Auchinleck :

In a removing pursued by Mr Walter Whiteford against the Tenants of ———, it is alleged by the Tenants, that they are Tenants to the Laird of Johnston to whom they paid mails and duties diverse years before the warning, who was tacksman to the heritor of the land, (from whom the pursuer comprised them), by tacks unexpired, at least *per tacitam relocationem*; and he not warned. THE LORDS found the exception relevant.

Auchinleck, MS. p. 194.