

found the exception relevant to purge the ejection, not only for the re-possession to the lands, but also for eliding of the violent profits of all the years, from the warning made to the said Richard Storie.

No 8.

Kerse, MS. fol. 191.

1615. February 7. M'CULLOCH against ———.

No 9.

IN an action pursued by David M'Culloch, donatar to the liferent of Samuel Blackburn, for removing from certain tenements of land, the LORDS found no process, while the rebel's sasines were produced, and found that he ought to call for the same to be exhibited, and then to pursue.

Kerse, MS. fol. 239.

1621. December 14. L. FALDOWNSIDE against L. BENNERSIDE.

No 10.

FALDOWNSIDE having comprised L. Bennerside's lands, pursues a removing against him, upon his sasine following thereupon, who compeared, and *alleged*, That the pursuer had passed from that comprising, in so far as for the same sums for the which that comprising was deduced, whereupon the pursuit was founded, and for other sums joined thereto, the pursuer had *de novo* comprised the same lands, and taken sasine thereupon, whereby the first comprising was, in effect, passed from and ceased. THE LORDS repelled that allegiance, and found, that, notwithstanding of the last comprising, which comprehended also the sums of the first comprising, the first was not taken away, but that the pursuer might use the same, and pursue thereupon.

Act. Balbes.

Alt. Stuart.

Clerk, Gibson.

Durie, p. 6.

1624. November 19. L. LAGG against His TENANTS.

IN an action betwixt the L. of Lagg and his Tenants, the LORDS sustained a removing, pursued at Lagg's instance, for removing from lands, upon a sasine given to him of the superiority only of these lands, which sasine of the naked superiority they found to be a sufficient title to the pursuer for producing removing thereupon at his instance, from the property of the same lands, against any one who could not allege an heritable right of property, or some other right, whereby they might maintain themselves in the possession of the said lands; and which the LORDS found, albeit the defenders *alleged*, That there was

No 11.

A right to the superiority alone found to be a sufficient title to remove from the possession of land persons exhibiting no right to possess.

No 11. no necessity to clothe themselves with any right, until the time that they were desired to remove, by one who had right to the property, seeing they excluded this pursuer's title, which being *per expressum* of the superiority, presumed necessarily that there was another proprietor, in whose person the right to remove only behoved to subsist, which allegiance was repelled, as said is.

Durie, p. 149.

* * Spottiswood mentions this case :

1624. *November 24.*—In a removing, pursued by the Laird of Lagg against John Grierson, the defender *excepted*, upon a contract of excambion made between the parties' grandfathers. *Replied*, Not relevant, unless the defender would say he is served and retoured to his umquhile grandfather. THE LORDS found that he might very well propone it, as apparent heir to his grandfather, especially *in judicio possessorio*.

Spottiswood, (REMOVING.) p. 276.

No 12.

1626. *July 18.*

WALLACE *against* TENANTS.

In a removing, at the instance of Wallace *contra* Tenants of _____, the LORDS would not sustain the pursuit, upon a sasine produced by the pursuer for his title, which was of a date posterior to the warning, albeit the pursuer *alleged*, That the sasine proceeded upon the superior's precept of *clare constat* given to him, as heir to his father, which precept preceded the warning, and so that the sasine should be drawn back to the precept; which was not sustained by the Lords, as if the sasine had proceeded upon a retour, in which case it is usual to draw back the sasine to the retour, but not to a precept of *clare constat*.

Act. *Cunninghame.*

Alt. *Miller.*

Clerk, *Scot.*

Durie, p. 220.

No 13.
May the validity of infestment be disputed.

1627. *July 20.*

MAXWELL of Garrarie *against* The TENANTS of Glassock; and NITHSDALE *against* TENANTS.

In a removing, pursued by Maxwell of Garrarie against the Tenants of Glassock, *alleged* for one G. That he was tenant to one Mackie, who was heritably infest in these lands, and he not warned. *Replied*, That any infestment Mackie had, was decerned to make no faith at my Lord Harris's instance, who was author to the pursuer. *Duplied*, That he ought not to dispute upon his master's right, but it was sufficient for him to allege infest. THE LORDS repelled the exception, in respect of the reply, June 1627. Sicklike in a removing pursued by my Lord Nithsdale against his Tenants; it being *alleged* by A.