

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.

That he was tenant to B. who was heritably infeft, holding of the King, and he not warned. *Replied*, That if B. had any infeftment, it was reduced by virtue of my Lords' restitution against the forefaulture. The exception was repelled, in respect of the reply.

No 13.

Spottiswood, (REMOVING.) p. 281.

1628. *January 30.* WILLIAM DOUGLAS *against* WEDDERBURN'S TENANTS.

No 14.

Not relevant in a removing to allege infeft before the warning, unless it be said duly infeft, *et ab habente potestatem.*

Spottiswood, (REMOVING.) p. 277.

* * * Durie reports this case :

In a removing pursued by John Stuart against Tenants of Coldinghame, the LORDS repelled an exception proponed for the L. of Wedderburn, upon his infeftment of the lands libelled, flowing from his author, upon whom he condescended, by virtue whereof he *alleged*, He was 20 years in possession of the said lands; which exception the LORDS found not sufficient to defend him, albeit clad with so long possession, against this removing, except he also had alleged therewith, that his said author was infeft in the same lands; for he ought to condescend that he was infeft by one having power, otherwise the exception was found could nowise be relevant.

Act. Stuart & Craig.

Act. Hope & Belshes.

Clerk, Gibson.

Durie, p. 335.

1628. *February 21.* CONSTABLE of DUNDEE *against* TENANTS.

No 15.

THE Constable of Dundee is obliged, by his bond, to infeft one Forrester in certain lands. Forrester makes Doctor Blair assignee to the bond, and he obtains possession of the land. The Constable pursues the tenants for removing. Doctor Blair compares, and *excepts* upon his author's rights, viz. the bond whereunto he was made assignee. THE LORDS decerned the tenants to remove, notwithstanding of the bond which would have served to defend Forrester, and not his assignee, who was but a singular successor, in respect the said bond was no real right; but the LORDS suspended the execution of the decret of removing for a certain space, that Doctor Blair in the mean time, might pursue the Constable for giving to him infeftment conform, and that the Constable might be paid of his feu-duties since the date of the bond.

Auchinleck, MS. p. 199.