

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 & Belshe.*

*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.*