

No 93.
third party
infest in the
lands who
was not warn-
ed; and they
were found
not obliged to
say or in-
struct that he
was lawfully
infest, because
the master
only could be
obliged to dis-
pute upon the
lawfulness of
his right.

ed; and found it not needful that the tenants should say, that their master was lawfully infest, as the pursuer *contended*, that they should be astricted to say; for, he *replied*, that if they excepted not upon a lawful infestment, the exception could not be admitted; which the LORDS found the tenants could not be astricted to do, seeing their master might only be compelled to dispute upon the lawfulness of his own right.

Act. *Baird.*

Alt. —.

Clerk, *Gibson.*

Fol. Dic. v. I. p. 140. Durie, p. 318.

1628. *July 15.*

LA. MAXWELL *against* HER TENANTS.

No 94.
Where a ren-
tal bore an
express pro-
hibition to
assign or sub-
set, it was
not found ne-
cessary to
call the ren-
taller. *See*
No 91.

IN the removing Lady Maxwell, whereof mention is made July 10. 1628*, the pursuer *replying*, that he could not clothe himself with that rental, because it bore that provision, 'That if the rentaller should put any other in possession of the land, except only himself, that then it should be null;' so that if the rentaller's self were pursued to remove, the rental would not defend him, far less can it defend this excipient; and the excipient *answering*, That he could not be compelled to dispute upon that right, which was not set to himself, but the rentaller should be summoned, who is not called in this process, before the rental could be drawn in dispute upon any nullity, whereto he would answer:— THE LORDS, notwithstanding that the rentaller was not warned, nor summoned, sustained the foresaid reply against the excipient, whom the Lords found ought to dispute for maintaining of that rental, which was the ground of his possession, and whereupon he founded his exception.

Fol. Dic. v. I. p. 140. Durie, p. 390.

1630. *February 25.*

A. *against* B.

No 95.

AFTER an adjudication deduced upon the creditors decret, obtained against a party renouncing to be heir to the debtor, the creditor pursuing for the mails and duties of the lands adjudged, the process and action was sustained, albeit no party was called, but the tenants and possessors; and there was no necessity found to summon the party against whom the adjudication was deduced, as the defender alleged ought to be; which allegiance was repelled.

Clerk, *Hay.*

Fol. Dic. v. I. p. 140. Durie, p. 494.

* Durie, p. 385. *voce* REMOVING.