

she consented, which being before the defender's tack, the liferentrix could not set the same. THE LORDS sustained the exception.

No 24.

*Spottiswood, (REMOVING.) p. 288.*

\* \* Durie's report of this case is No 8. p. 570. *voce* ANNUALRENT INFESTMENT.

1631. March 9. Lord JEDBURGH *against* TENANTS.

No 25.

THE Lord Jedburgh disponed some lands to some men by contract and charter, containing a procuratory of resignation; but before they were infest, he dispones the same lands by contract of marriage between his son Sir Andrew Ker and the Lady Yester, to the Lady in liferent, whereupon she was infest. After her husband's decease, she sought these men to be removed. They defended themselves by their infestment, clothed with so many years possession, and their disposition before her right, all which could not be taken away summarily in such a judgment. THE LORDS repelled this allegiance, in respect of her infestment intervening between their charter and their sasine: As to that, that it was an infestment standing unreduced, clothed with twenty years possession at least, the LORDS repelled it not, for they are not in use to put a liferenter to a reduction.

*Spottiswood, (REMOVING.) p. 288.*

1631. March 29. L. HADDO *against* L. LUDQUHARN.

No 26.

IN a removing, by the L. Haddo *contra* L. Ludquharn, from the house and manor place of Haddo, and the mains thereof, pursued by the minor, within the years of his minority, against Ludquharn, being his curator, standing *sine quo non*; it being *alleged* by the curator, That no action ought to be sustained at the pursuer's instance, seeing he was not seized in the lands libelled; and the minor *replying*; That this exception ought to be repelled, as not competent to be proponed by the curator, against his own minor, who ought to have obtained himself infest; and the curator *answering*, That *stante curatela*, no such action of removing ought to be sustained at the minor's instance, against his own curator;—the LORDS repelled the exception and duply, and sustained the action of removing, at the minor's instance against his curator *sine quo non, etiam durante cura*, and decerned him to remove both from house and mains; seeing the minor was married, and might crave his house to himself and his wife to dwell in. But for removing from the land, I consider not the reason thereof, that in law, the curator might be removed from the mains, his office standing; albeit, if the minor had wanted maintainance, he might have had

Removing sustained at the instance of a minor without a sasine, against his curator, *et ante redditas rationes.*

No 26.

competent action to have a portion of the living being decerned by the Judge to be assigned to him for sustentation of himself and his wife; but it was not pursued *hoc modo*, and so the curator, before count and reckoning, may piece and piece be removed from the minor's whole estate, which is hard in law.

Act. Baird.

Alt. Mowat.

Clerk, Gibson.

*Durie, p. 587.*

\* \* \* Auchinleck reports this case :

THE Laird of Haddo being but 20 years of age, and married, pursues the Laird of Ludquharn his curator *sine quo non*, upon a warning made at Whitsunday 1630, to remove from his house and mains of Haddo. It is *alleged* by the defender, That he cannot be decerned to remove, because the pursuer was not seised, and so had no title. *2do*, He was minor, and so could not pursue his curator to quit a part of his estate, until he made count of the whole intromission, whereof the mains was a part, which counts were presently depending. To the *first* part it was *replied*, That his house and yards were equivalent to his aliment, for which he might pursue his curator; for the same reason, the *second* reason of the exception ought to be repelled, and Ludquharn cannot object to the pursuer, that he is not seised, and that he was not served or seised, he being his chief curator, and keeper of all his writs whereby he might seek service. THE LORDS repelled the exceptions in respect of the replies.

*Auchinleck, MS. p. 199.*

1631. December 17.

AGNEW against CORCAPHIE.

No 27.

SIR PATRICK AGNEW being infest in a wadset of a mill, grants a back-tack to the wadsetter, for payment of a certain duty, and for not payment of the tack-duty, pursues the tacksman, either to remove, or else to find caution for payment of the duty of the back-tack. Compears Corcaphie, who had comprised the said mill from the wadsetter, after the said wadset; and being admitted, *alleged*, That Sir Patrick can have no action of removing, till first his sasine were produced. To which it was *answered*, That he had to do now, only with his own tenant, who had taken a tack from him, and for not paying of his duty was pursued for removing, in which case he had no necessity to produce his sasine; which reply the LORDS found relevant.

*Auchinleck, MS. p. 198.*