

No 31.

it were reduced, and needed not allege any thing upon his infestment. THE LORDS sustained the exception.

Spattiswood, (REMOVING.) p. 289.

No 32.

1633. December 7. BALMAGIE against JOHN MAXWELL.

IN a removing pursued by the tutor of Balmagie against John Maxwell of Meikle Cocklick, the pursuer's title being a sasine upon a comprising; *alleged*, No removing upon this sasine, because he offered to prove that the pursuer was completely satisfied of the whole sums, principal and annualrents contained in his comprising, by intromission with the mails and duties of the foresaid lands, and that long before the expiring of the legal, so that he must count and reckon *ante omnia*. *Replied*, This exception of payment not competent in the removing, neither can be received to delay the pursuer, especially the legal having expired above twelve years since. THE LORDS found the exception relevant and admissible *hoc loco*, as had been done in the like cases before.

Spottiwood, (REMOVING.) p. 289.

No 33.
Title in bur-
gage tene-
ments.

1672. July 9.

THE LORD TREASURER-DEPUTE against The PARSON of DUNDEE and Others.

IN a removing at the instance of Lord Hattoun, Treasurer-depute, against the Parson of Dundee, for removing from a lodging within the town, it was *alleged*, No removing, because the pursuer's title was only a gift of *ultimus hæres* under the great seal, whereupon no infestment followed, not only until after the warning, but until after the term of Whitsunday, unto which they were warned to remove. It was *replied*, That there was produced a sasine of barony of Dudhope, comprehended the said tenement, and was sufficient against the defender, who could allege no right; likeas, they offered to produce a special sasine in that tenement, which was sufficient; *albeit*, it was after the term.

THE LORDS did sustain the removing, seeing the defender could allege no right in his person, but superceded all execution till Martinmas next, in respect that the sasine of the barony did not bear expressly this lodging, nor was taken thereat, and that the lodging held of the town of Dundee *in libero burgagio*.

Gösford, MS. p. 267.