

**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.