

No 41.

lified a more pregnant possession in his own person of these same lands, by setting of the houses and receiving yearly mails therefor, and by barking of his skins in the lime-pot continually, and spreading and drying them upon the waste ground without interruption; which the LORDS sustained in fortification of the pursuer's right, to produce removing against the excipient in this same judgment, without necessity of any reduction of the excipient's right.

Act. *Craig.*

Alt. ———.

Clerk, *Gilson.**Durie, p. 278.*

No 42.

1628. *January 26.* CAPTAIN ANNAND *against* TENANTS.

IN a removing by Captain Annand against his Tenants, the defenders alleging that they were Tenants to their master, who was infest in the lands libelled before the pursuer's sasine produced, and by virtue thereof, who had been sundry years in possession; the LORDS sustained this exception, the same being proponed for Tenants, and found no necessity that the defenders being Tenants should be compelled, either to allege that their said master was infest by one having power, or that he was ten years in possession of the lands, but sustained the same, without alleging any further.

Act. *Dunlop.*Alt. *Mowat.*Clerk, *Hay.**Durie, p. 333.*

No 43.

1628. *February 20.*BANFF *against* TENANTS, and MARR *against* TENANTS of DRYBURGH.

It is enogh for a tenant to say, that he is tenant to N. who is infest, and he not warned; and he needs not say, that his master is lawfully infest, but only infest; Laird of Banff against his Tenants, 7th December 1627. But if the lands be kirk-lands, he must say, infest and confirmed; because if his master's infestment of kirk-lands be not confirmed, it is null by way of exception, by the act of Parliament. Marr against Tenants of Dryburgh, 20th Feb. 1628.

Spottiswood, (REMOVING.) p. 276.

* * Auchinleck reports this case :

THE Tenants of Dryburgh pursued for removing, *alleged*, That they were Tenants to , who was infest. To which it was *replied*, That the exception is not relevant, they would allege lawfully infest and confirmed, in respect it was kirklands. THE LORDS repelled the exception, in respect of the reply.

Auchinleck, MS. p. 191.