

1628. *June 20.*

————— *against* LORD CARNEGIE, and ANDERSON his Tenant.

No. 27.

Albeit the reasons of suspension should be verified *instanter*, yet, in a suspension of a decret of removing, it being alleged, that the decret was obtained against the tenants, whose master was neither mentioned nor summoned, and that the said master was infeft in the land, whereupon the decret of removing was obtained as part and pertinent of the land, and conform thereto, had been twenty years in possession; this was found relevant to suspend the said decret; and a term assigned to the superior to prove his possession, that it was part and pertinent.

*Fol. Dic. v. 2. p. 415. Auchinleck MS. p. 225.*

1628. *July 18.*

FALCONER *against* JAMIESON.

No. 28.

In a suspension of a decret of removing obtained for null defence, albeit the said suspension be raised in the tenants' names, yet if any pretending right to the lands, producing instructions of his titles, he may be admitted for his interest.

*Auchinleck MS. p. 226.*

1628. *December 18.*

L. JOHNSTON *against* His TENANTS.

No. 29.

The L. Johnston having recovered decret against the tenants, to remove from the lands possessed by them, so far as pertained to him, in absence of the defenders, and they suspending, that they bruiked that part pertaining to him with the rest of the same lands, pertaining heritably to the Viscount Drumlanrig and Lord Maxwell *pro indiviso*, so that there being three heritors, portioners of the lands undivided, they knew not the pursuer's part from the rest, that they might remove therefrom; this reason was rejected, and the letters found orderly proceeded, in respect of the decret standing, which could not be taken away by suspension, where there behoved to be assignation of terms to prove; but was reserved to be tried by way of reduction.

*Act. Cunninghame.*

*Clerk, Scott.*

*Fol. Dic. v. 2. p. 415. Duric, p. 411.*

\* \* \* Auchinleck reports this case :

Sometimes a reason of suspension against a decret of removing consisting *in facto*, is not received by the Lords by way of suspension, as that the lands are bruiked *pro indiviso*.

*Auchinleck MS. p. 226.*