

M'CHIRLIE against CAMPBELL.

No 21.

A CHARTER without sasine, sustained against the heir-granter of the said charter, to stay the removing.

Auchinleck, MS. p. 201.

1630. January 15. HUNTER against HARDIE.

In a removing pursued by Hunter against certain persons, compared one Hardie, and *alleged*, The defender could not be removed, because they were his tenants, he being infeft in the lands libelled; for the lands belonging to the Laird of Spottiswood, he disposed the same to Hardie in 1564, by a base infeftment holding of himself, by virtue of which disposition Hardie came in possession of a part of the lands disposed. Long after, Spottiswood disposed the same lands to Hunter's author, who was publicly infeft, holding of the King, and he now sought the tenants, who occupied that part whereof Hardie never came in possession, to be removed; and *replied*, That Hardie could not defend them, they never being his tenants; but, on the contrary, he offered to prove, that, notwithstanding of his base infeftment, they remained still Spottiswood's tenants, by payment to him of their duties, ever till the disposition made to the pursuer's author. *Duplied*, The defender being infeft in the whole, long before the pursuer, and in possession of a good part, now, when the pursuer, by virtue of his posterior infeftment, is seeking possession of the rest, he may very well impede him. THE LORDS sustained the exception, in respect of the prior infeftment, (although base,) clothed with possession of a part, it being *anyum tenementum*.

No 22.
Effect of a
base infeft-
ment.

Spottiswood, (REMOVING.) p. 287.

* * Durie's report of this case is No 59, p. 1338. BASE INFESTMENT.

1630. February 19. Laird of CLUNIE against HARTHILL.

No 23.

In a removing, it is *excepted*, That the possessor stands infeft in the land, and clad with possession of 100 years. To which it was *replied*, That the ex-cipient's infeftment being base, and his superior's infeftment being reduced, makes the vassal's base infeftment to fall *per consequentiam*, and not able to defend him in a removing, although the said libel was not called in the reduction of his author's infeftment.

Auchinleck, MS. p. 197.