

Whitsunday, the setter might have warned before the Whitsunday, to remove at the Whitsunday, which would have been sustained; notwithstanding whereof, the foresaid allegiance was sustained, and no process found upon that warning, albeit she died before the term; seeing it is not alike as if a tack had been set of that endurance to the term, seeing there it was constant, that the tack would then expire; but it is not so in warning of a liferenter living the time of the warning, for none can be certain that she will die before that term, and thereupon, to make the warning upon uncertainty of cessation of her right. And it being *alleged*, That the warning was made at the kirk of which is all ruinous, and not at the kirk of , to the which kirk, the kirk whereat the warning is made is united by act of Parliament, and only divine service used thereat, the LORDS were of the mind to sustain this allegiance, and to reject the warning therefore, but it was not decided, in respect of the discussing of the other allegiances, *ut supra*.

Act. *Cunninghame*.Alt. *Nicolson*.Clerk, *Scot*.*Durie*, p. 646.

1632. November 14. HIND against LAIRD OF WEDDERBURN.

THOMAS HIND pursues the Laird of Wedderburn for a husband land in Eymouth. It is *excepted* by Wedderburn, that no removing could be granted, because he is heir to his father, who obtained decret of removing against the pursuer's goodsire, to whom he is heir, and by virtue thereof he has been in peaceable possession by the space of 40 or 50 years. It was *replied*, That the exception founded upon the decret of removing is not relevant, except he say that he or his father were infest in the said lands. THE LORDS sustained the exception, in respect the defender standing so long clad with possession, untill the same be produced.

Auchinleck, MS. p. 201.

* * * Spotiswood reports this case.

IN a removing pursued by N. Hood against the Laird of Wedderburn, *alleged*, The defender's father, to whom he is heir or apparent heir, obtained decret of removing against the pursuer's grandfather, to whom he is heir; by virtue of which decret, he and his father had been in possession of the lands libelled for thirty or forty years. *Replied*, Nothing can maintain him but a real right, such as a tack, sasine, &c. As for the decret, not sufficient, especially seeing the ground whereupon it proceeded, viz. the defender's sasine, was null, being kirk-lands, not confirmed. *Duplied*, His decret was enough to maintain him in possession, being cloathed with so many years possession, till such time as

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

Spattiswood, (REMOVING.) p. 289.

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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.

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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.