

Kirk-lands; for if it was not confirmed, it was a null infeftment, and so could not allege upon her infeftment, but was as if she were not infeft: And this was so found, albeit the tenants *duplied*, That they could not dispute upon the validity of their master's right, seeing they were only tenants, and she was not warned, who, if she had been warned, would have maintained her own right, which was not known to them, if it was confirmed or not; which was repelled.

Act. *Scot.*

Alt. ———.

Clerk, *Scot.**Fol. Dic. v. I. p. 140. Durie, p. 244.*

No 90.
master, the
condescend-
ence was not
sustained, un-
less they
would farther
allege, that
the infeftment
was confirm-
ed by the
King, being
of kirk lands.

1627. *March 22.* LA. NITHISDALE *against* Her TENANTS.

IN a removing by the Lady Nithisdale against her Tenants, one Pollock *alleged*, that he was tenant to another who had a rental of the lands set during the lady's lifetime, and during the receiver's lifetime, who were both in life; and he who was rentaller not being warned, and who was his master, no process therefore ought to be granted against the excipient; and the pursuer *replying*, that, by the express condition of the rental, it was provided, that if the rentaller should put another in possession of the land, *hoc ipso* the rental should expire; and so seeing the excipient confessed his possession as tenant to the rentaller, the said rental could not furnish any exception; THE LORDS, notwithstanding of the reply, found no process, while the rentaller were called and warned, that he might dispute upon the force of his own rental, which could not be taken away except himself were called.

Act. *Douglas.*

Alt. ———.

Clerk, *Hay.**Fol. Dic. v. I. p. 140. Durie, p. 293.*

No 91.
A defender in
a removing
founded upon
a tack from a
rentaller who
was not warn-
ed. The pur-
suer replied
upon condi-
tions in the
rental by
which it
would appear
to be expired.
The Lords
found no pro-
cess till the
rentaller was
called.

1627. *July 26.* LADY BOYNE *against* Her TENANTS.

IN a removing pursued by the Lady Boyne against her tenants, it was found, she needed not warn her own son, the Laird of Boyne, apparent heir to his father, from whom the Lady's infeftment in conjunct fee or liferent proceeded; because a man is not obliged to warn his own author, or his apparent heir.

Fol. Dic. v. I. p. 140. Spottiswood, (REMOVING) p. 283.

No 92.

1627. *December 7.* L. BAMFF *against* His TENANTS.

IN a removing by L. Bamff against his Tenants, the LORDS found an exception relevant, proponed for the defenders, that they were tenants to one condescended upon, who was heritably infeft in the lands libelled, and who was not warn-

No 93.
An exception
sustained in a
removing,
that the de-
fenders were
tenants to a

No 93.
third party
infest in the
lands who
was not warn-
ed; and they
were found
not obliged to
say or in-
struct that he
was lawfully
infest, because
the master
only could be
obliged to dis-
pute upon the
lawfulness of
his right.

ed; and found it not needful that the tenants should say, that their master was lawfully infest, as the pursuer *contended*, that they should be astricted to say; for, he *replied*, that if they excepted not upon a lawful infestment, the exception could not be admitted; which the LORDS found the tenants could not be astricted to do, seeing their master might only be compelled to dispute upon the lawfulness of his own right.

Act. *Baird.*

Alt. —.

Clerk, *Gibson.**Fol. Dic. v. I. p. 140. Durie, p. 318.*1628. *July 15.*LA. MAXWELL *against* HER TENANTS.

No 94.
Where a ren-
tal bore an
express pro-
hibition to
assign or sub-
set, it was
not found ne-
cessary to
call the ren-
taller. See
No 91.

IN the removing Lady Maxwell, whereof mention is made July 10. 1628*, the pursuer *replying*, that he could not clothe himself with that rental, because it bore that provision, 'That if the rentaller should put any other in possession of the land, except only himself, that then it should be null;' so that if the rentaller's self were pursued to remove, the rental would not defend him, far less can it defend this excipient; and the excipient *answering*, That he could not be compelled to dispute upon that right, which was not set to himself, but the rentaller should be summoned, who is not called in this process, before the rental could be drawn in dispute upon any nullity, whereto he would answer:— THE LORDS, notwithstanding that the rentaller was not warned, nor summoned, sustained the foresaid reply against the excipient, whom the Lords found ought to dispute for maintaining of that rental, which was the ground of his possession, and whereupon he founded his exception.

*Fol. Dic. v. I. p. 140. Durie, p. 390.*1630. *February 25.*A. *against* B.

No 95.

AFTER an adjudication deduced upon the creditors decret, obtained against a party renouncing to be heir to the debtor, the creditor pursuing for the mails and duties of the lands adjudged, the process and action was sustained, albeit no party was called, but the tenants and possessors; and there was no necessity found to summon the party against whom the adjudication was deduced, as the defender alleged ought to be; which allegiance was repelled.

Clerk, *Hay.**Fol. Dic. v. I. p. 140. Durie, p. 494.** Durie, p. 385. *voce* REMOVING.