

she consented, which being before the defender's tack, the liferentrix could not set the same. THE LORDS sustained the exception.

No 24.

*Spottiswood, (REMOVING.) p. 288.*

\* \* Durie's report of this case is No 8. p. 570. *voce* ANNUALRENT INFESTMENT.

1631. March 9. Lord JEDBURGH *against* TENANTS.

No 25.

THE Lord Jedburgh disponed some lands to some men by contract and charter, containing a procuratory of resignation; but before they were infest, he dispones the same lands by contract of marriage between his son Sir Andrew Ker and the Lady Yester, to the Lady in liferent, whereupon she was infest. After her husband's decease, she sought these men to be removed. They defended themselves by their infestment, clothed with so many years possession, and their disposition before her right, all which could not be taken away summarily in such a judgment. THE LORDS repelled this allegiance, in respect of her infestment intervening between their charter and their sasine: As to that, that it was an infestment standing unreduced, clothed with twenty years possession at least, the LORDS repelled it not, for they are not in use to put a liferenter to a reduction.

*Spottiswood, (REMOVING.) p. 288.*

1631. March 29. L. HADDO *against* L. LUDQUHARN.

No 26.

IN a removing, by the L. Haddo *contra* L. Ludquharn, from the house and manor place of Haddo, and the mains thereof, pursued by the minor, within the years of his minority, against Ludquharn, being his curator, standing *sine quo non*; it being *alleged* by the curator, That no action ought to be sustained at the pursuer's instance, seeing he was not seized in the lands libelled; and the minor *replying*, That this exception ought to be repelled, as not competent to be proponed by the curator, against his own minor, who ought to have obtained himself infest; and the curator *answering*, That *stante curatela*, no such action of removing ought to be sustained at the minor's instance, against his own curator;—the LORDS repelled the exception and duply, and sustained the action of removing, at the minor's instance against his curator *sine quo non, etiam durante cura*, and decerned him to remove both from house and mains; seeing the minor was married, and might crave his house to himself and his wife to dwell in. But for removing from the land, I consider not the reason thereof, that in law, the curator might be removed from the mains, his office standing; albeit, if the minor had wanted maintainance, he might have had

Removing sustained at the instance of a minor without a sasine, against his curator, *et ante redditas rationes.*