

ed him to prove that another was rentalled therein before him, who had transferred his right in the pursuer's person. *Duplied*, That ought to be repelled, in respect of his rental, by virtue whereof he had been in possession for twenty or thirty years. THE LORDS sustained the exception upon a rental cloathed with possession, as if it had been an infeftment.

Fol. Dic. v. 2. p. 90. Spottiswood, (REMOVING.) p. 280.

No 27.

1628. July 26. L. WARDIS against L. DINKINTIE.

THE L. of Wardis pursues the L. Dinkintie for the astricted multures of his lands, in the which multures Wardis was infest, and the defender proponing a nullity against the pursuer's infeftment, the same being of lands of the abbacy Lindores, since the annexation whereof to the crown there was no dissolution made before the pursuer's infeftment, without which had preceded, the pursuer's infeftment could not be found valid, the same being granted since the annexation; this nullity of not dissolution, was not received against this infeftment *hoc ordine*, because it was offered to be proved, that the same was clad with real possession these 15 years bygone, and because there were three infeftments standing in the persons of three of the pursuers authors, which the LORDS found could not be taken away so summarily by exception in this judgment, tending to continue a possession, and not to acquire a new possession, but they reserved action upon that nullity to the excipient, as accords.

No 28.

Act. ——— *Œ Davidson.*

Alt. *Advocatus.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 90. Durie, p. 394.

1628, November 19. LOCH against LOCKIE.

SOME tenants of a tenement under the castle wall of Edinburgh, raised a double poinding against Robert Loch and Laurence Lockie, by whom they were doubly distressed for payment of their mails and duties. Loch *alleged*, That he was infest in an annualrent of L. 4 out of the tenement, and by virtue thereof ten years in possession, by obtaining of a decret of poinding of the ground against the heritor and tenants, and by poinding for the same annualrent, and uplifting thereof. Lockie *alleged*, That he was heritably infest in the property of the said tenement, by a precept of *clare constat*, given by my Lord Haddington to him, who is superior of the same, as being temple lands; and as to the infeftment of annualrent and the possession foresaid, no respect should be had thereto, because it was null of the law, being an infeftment of annualrent out of a temple-tenement, to be holden in burgage of the King, by resignation in the provost's and bailies' hands, which could not be, the Lord Torphichin being superior thereof. THE LORDS sustained the allegiance for Loch, cloathed with ten years possession.

Fol. Dic. v. 2. p. 90. Spottiswood, (MAILS and DUTIES.) p. 201.

No 29.
An infeftment of annualrent, cloathed with 7 years possession, has the benefit of a possessory judgment.