

E J E C T I O N.

1573. *March 2.* ROBERT WISHART *against* The LAIRD of ARBUTHNOT.

IN action of ejection, the persewar aucht and sould libel possessioun with sum titil to the landis out of the quhilk he is ejectit, for the libel is not relevant, gif it contene na sufficient titil, sic as takisman, mailler, or sum uther sufficient richt.

Fol. Dic. v. 1. p. 252. Balfour, (LIBEL) No 9. p. 315.

No 1.
Found, that the pursuer of an ejection must libel possession with some title, otherwise the libel is not relevant.

* * * Colville reports the same case :

THE persewar of ejection libelling bairly occupyar, without ane title, naither saying mailler nor takisman, nor yet that he occupyit the lands libellit be verteu of ane title at any time immediately preceding, libels not sufficientlie to call for ejection, and thairfore absolvitor sould be given frae the libel.

Colville, MS. p. 237.

1575. *June 3.* LAIRD of COLLISTON *against* The EARL of ERROL.

THE Laird of Colliston persewit the Earl of Errol for ejecting him furth of the lands of Colle, and obtained decriet upon him; and tharafter callit him continuallie in the Justice Aire of Aberdeen in *anno* 1534; but the matter being agried be the Earl of Morton, R^{egent} for the time, the said persewar enterit thairto again be vertew of the R^{egent's} decriet-arbitral given betwixt them; and the defendar commandit to abstain fra farder molestation; but when the persewar had no corne, stray, nor no kind of (sustenance) he was constrained to seek among friends to furnish his bestial for to labour the ground, and because

No 2.
Ejection was sustained, although there was no violence done to the pursuer's person or family, but only the house blocked up, and sustenance for

No 2.
man and
beast stopped
from coming
in to him, so
that he at
length left the
house.

it was winter, there was na grass, and thairfore it behovit him to purchase hay. Notwithstanding, this defendar, by his promise and appointment, contained in the decriet-arbitral, whilk was that he sould not molest nor trouble, but suffer the persewar to enter, use, occupy, and labour his lands, came with ane company of men bodin in fear of weir to the Laird of Colliston's houses and biggings, and destroyit all kinds of stuffs and (sustenance) both of men and beast, that he could apprehend, and sindrie times raid and repairit about the house to the effect to stop all kind of stuff fra him, or his guidis, that was necessar for them, and if they fand any thing bringing to him, they took, destroyit, and consumit it, manner foresaid, and took the furnishers knives, swords, and plaids, frae them, and struik them with bluidy straiks, and boistit them, that if ever they did the like again, they wald hang them.—This form of oppression continuit thirteen dayis and nights continuallie, throw the whilk, the persewar, his familie, and servants, with bestial, was compellit to leive the lands of Colliston, and house thairof waist, and so to desist and ceis fra labouring, manuring, and occupying thairof; heirfore the persewar calls the said Earl for the hail profits, that he might have had of his lands, if he had peaceable bruikit them, but trouble made be the Earl and his complices, as was at lenth contained in the libel of ejection and violent spulzie. The Earl *allegit* he could not get the hail profits, as was libellit, for such thing had never been in use nor practic before, viz. that ejection sall be decernit upon such form of troublance as said is, whilk allegiance of the defendar the Lords repellit, and referrit the libel to the persewar's probation as very ejection. Thairfor the Earl *allegit*, That this action was already depending before the Lords of Secret Counsale, litiscontestation made, and witnesses received, thairfor it could not be callit before the Lords of Session. The persewar *allegit*, That it was not *eodem modo agendi*, for the action depending before the Lords of Secret Counsale was be ane supplication for diverse points of oppression and injurie committit and done be the defendar to him, whilk defendar had denyit, the same was given to the persewar's probation, whairin witnesses being received, and the matter proven, order might be put thairto. And as to this action, it is of another nature, and other manner persewit before the Lords of Session, whilk is for the violent ejection of the persewar out of his lands, as is contained in his libel, and for the profit that he might have had if the Earl and his complices had not molested, troubled, and ejected him, as said is; and also the persewar to be restored to the peaceable possession again, and the Earl to be decernit to ceis frae all farder troubling; and so the two actions are of diverse natures, and so the other sould not make impediment or derogation to the other action; whilk allegiance the Lords fand relevant, and repellit the Earl's allegiance, and admittit the persewar's allegiance to his probation. Memorand. This action was persewit in June, the summons raisit in March, and so lang before the time, that all cornes was sawn, for the whilk cause he callit; yet it was fund sufficientlie to convict the defendar, for the profits of that year alswell to be sawn as alreadie sawn before

the troubling and molestation. *Hoc in fructibus artificialibus, non itaque in naturalibus.*

No 2.

Fol. Dic. v. 1. p. 252. Colvil, MS. p. 245.

1581. May.

ANDERSON against KINNEIR.

THERE WAS a woman callit Kinneir, that was persewit for ejection and spoliation be ane Anderson, for ejecting of him furth of a mill and mill lands of William Anderson. The libel being admittit to probation, and being fund proven against certain other persons, the question fell out, the woman, the time of the ejection, being in Edinburgh, and remained there twenty days thereafter, and then coming to the house, and remained with her sons, who were the ejectors, and having intromitted with certain geese, and ane gray mare, whilk were ganging in the field *tanquam derelicta*, and her intromission with the same was proven onlie be ane witness, if she sould be decernit as ejector.—THE LORDS, after long reasoning, decernit her to have ejectit and committit spulzie; for it was *allegit* be some of the LORDS, that notwithstanding she was absent at the deed doing, yet be coming there, and remaining with her sons, albeit it was *ex longo intervallo et temporis tractatu*, she ratifiet and approvit all the deed as if it had been done at her command and assistance, *et sic ratihabitio retro trahitur, et mandato equiparat., et maxime quando alicujus nomine quidpiam gestum est, de quo vide reg. Juris in sexto; tamen bona pars dominorum in contraria fuerant opinione.*

Into the same action and cause, the matter being fund proven, the quantitie was referrit to the aith of the persewar; and being sworn, gave in ane quantitie that was sworn, almost agreeing to the libel. THE LORDS, nevertheless, after long reasoning among themselves, votit, for the most part, that they wald modify the quantity and prices, albeit the party had sworn, and were of that mind, that the common law sould be followed, *quod præmiss. taxatione judicis, prout in cap. super., extra de his qui vi; et maxime apparebat dominis*, that all things contained in the libel was rigorously socht, and that there was appearance of perjury, *et nonnulli dominorum in contraria fuerant opinione*; yet aither the parties aith sould be followit furth and tane, as was the form of the ancient practic, or else the LORDS, *in rebus ejusmodi ordinis et magni momenti*, should receive the modification to their ain selves, as they commonlie usit to do before the oath.

Fol. Dic. v. 1. p. 252. Colvil, MS. p. 300.

1583. May.

FRASER against ———.

THERE WAS a woman callit Fraser, that persewit certain persons for the ejection of her furth of certain lands, and the spoliation of certain corns. She

No 3.

A party, tho' not present at the deed of ejection and spoliation, and a long time thereafter absent, was nevertheless found guilty of the deed by ratification of it, which ratification was inferred by her coming to the house whence the pursuer was ejected, and living there with her sons, who had committed the ejection.

No 4.

Process of ejection was sustained at the instance of a tacks.