1583. *February.* HAMILTON *against* CRAWFORD.

No 4.

IN a removing pursued by the Earl of Arran Stuart, against one Crawford, to remove from Kinneil, the defender *alleged*, He was tenant to the Earl of Arran Hamilton. Afterwards the same Crawford being pursued to remove by the Earl Hamilton; and the defender *alleging*, That the pursuer had produced no title to instruct his precept of warning and summons; his former confession was obtruded to him by way of reply, and found by the LORDS, that the defender's judicial confession, (though not excepted by the pursuer,) was sufficient to prove against himself, and serve *loco tituli* to the pursuer.

Spottiswood, (REMOVING.) *p.* 277.

*** Colvil reports this case:

THE umquhile Earl of Arran Hamilton pursued one Crawford to flit and remove from the kirklands of Kinneil. It was *answered* by the defender, That the pursuer produced no title to instruct his precept of warning and summons. It was *replied*, That the said Crawford being pursued for the said cause by the Earl of Arran Stewart, did allege, for his defence, that he was tenant to the said Earl Hamilton, which confession made of a sasine was a sufficient title, *quia confessio et res judicata paribus passibus ambulant, L. unica C. De confessis, et Bart in L.* 6. *D. Ibidem.* It was *answered*, and reasoned among the Lords, That the said confession was not accepted by the other party, nor no instruments nor documents taken upon the acceptation of the same, and so the defender ought not to be prejudged by such a naked assertion, rather than a confession accepted by the party in judgment, and howsoever it was the pursuer could not be said to found his intention upon the defender's confession, nor upon a title, as was in the dedefender's hands, appertained to the defender. THE LORDS, for the most part, found, by interlocutor, that the judicial confession made by the defender, albeit it was not accepted by the pursuer, was sufficient to prove against the defender, *licet nonulli fuerunt in contraria opinione.*

Colvil, MS. p. 387.

1591. ———. STUART *against* SHARP.

No 5.
Effect of possession.

COLONEL STUART, cessioner and assignee, constituted by John Steil to his liferent of the lands of Houston, warned certain tenants to flit and remove. *Excepted*, That they had tacks for terms to run, from them who had right to set them, viz. Mr John Sharp, who was heritable proprietor of the said lands, and who had been in possession of them, he and his authors, for the space of 38 years. *Replied*, That any infeftment Mr John, or his authors had, the same

proceeded from Matthew Hamilton of Milburn, unto whom the cedent, John Steil, disponed these lands, with reservation of his own liferent, and so Mr John, or his authors, could be in no better case than he to whom the first alienation was made. *Duplied*, That according to the common law, and daily practice, the defenders, and their authors, being so long in possession, by virtue of titles standing unreduced, without any reservation of liferent, they could not be compelled to enter in question of their rights and titles, but behoved *gaudere privilegio interdicti, uti possidetis*. To all this it was *answered*, That Mr John Sharp could never be heard to say against the reserved liferent of John Steil in Matthew Hamilton's infeftment, because he had used the said infeftments judicially, and had obtained decreet and sentence by virtue thereof, in so far as the Lords had decerned a reversion given by John Hamilton of Shawton, (who was author to Matthew) to appertain to him, *tanquam jus superveniens et quod accreverat illi*, because he had bought the lands; and so having both judicially confessed the said liferent, and having allowed the infeftment whereinto it was reserved, and having also reported commodity by virtue thereof, he behoved *ex necessitate* to abide by the same, and consequently to fulfil the reservation of the liferent specified therein. THE LORDS, *in præsentia Regis*, admitted the exception qualified with the 38 years possession. *Nonnulli Dominorum contra.* No 5.

Spottiswood, (REMOVING.) *p.* 280.

1610. *February.* BELMURE *against* TENANTS of Glengowar. No 6.

IN an action of ejection pursued by Sir Belmure *contra* the Tenants of Glengowar, for ejecting them furth of the lands of Nether Glengowar, this exception was found relevant, that decreet of removing was recovered by umquhile Mark, Earl of Lothian, against Sir whereupon the Sheriff charged to put the Earl in possession, under pain of horning; the Sheriff ejected lawfully and orderly the said Sir ; likeas, thereafter, my Lord Lothian put the tenants in possession; notwithstanding it was *answered*, That the exception was not relevant, without it were alleged, that Sir was denounced rebel, and put to the horn upon the foresaid decreet of removing, whilk the LORDS found nowise necessary to be alleged for the part of the tenants.

Kerse, MS. fol. 190.

*** Haddington reports this case:

1610. *February* 10.—IN a pursuit of ejection, the LORDS admitted an exception, that the defender concurred with the Sheriff in putting a decreet to execution, for removing this pursuer from the lands libelled, albeit the defender *alleged* not that this pursuer was put to the horn for not removing.

Haddington, MS. No 1802.