

could not allege that decret, because that since the giving of the same, he had received the mails and duties of the lands, and so had *tacite* passed from the same. To this was *answered*, That albeit he had received the mails and duties, yet he had not passed from the decret, but only from the execution of the same, and the decret ought yet to serve for *declaratoria juris*, so that he against whom it was given could never make any right thereof to any other person. The contrary was *alleged* directly by the other party, that the receiving of the mails and duties took away the decret *in toto*, and that no violence could be sought after the receiving of the mails and duties, so there could be no succeeding in the vice. THE LORDS found by interlocutor, that the defender ought not to be decerned succeeded in the vice, and so admitted the exception, and that the receiving of the mails and duties, after the giving of a decret, takes away the same *in toto* as was practised in the action betwixt the Earl of Morton and the Laird of Laggat.

No 19.

*Fol. Dic. v. 1. p. 432. Colville, MS. p. 275.*

1581. *March.*THE LORD GRAY *against* HIS TENENTS.

No 20.

THE Lord Gray warned a tenant to flit and remove from a piece land. It was *answered* by the tenant, that he ought not to remove, because the said Lord had an yearly consuetude or use within his barony to take a cuddich in meal and drink from every tenant, and now he had converted the same into a sum of money, and took six merks from each man therefor, according to use, and he had received from the defender six merks since the warning. It was *answered*, that his cuddich was no duty of the ground, but a thing done of benevolence. THE LORDS found the exception relevant, and that the taking of the cuddich stopped the said removing.

*Fol. Dic. v. 1. p. 432. Colville, MS. p. 327.*

1594. *March.*LAIRD OF SPYNIE *against* BOTHWELL.

No 21.

IN an action of removing pursued by my Lord of Spynie against the tenants of Bothwell, it was found, that the receipt of the Whitsunday's mails at the whilk the warning is made, and of the fermes of the crop sown and growing upon the ground at the time of the warning, prejudices not the said warning, unless it be the mails or fermes of ane subsequent crop by that quhilk is sown and growand at the time of the said warning.

*Fol. Dic. v. 1. p. 432. Haddington, MS. No 521.*