BREVI MANU.

1579. *January* 21. LADY GIFFANE *against* L. CALDWALLIS.

No 1.

FOUND, that a pupil, though above seven years old, cannot be taken *brevi manu* by the tutor from the mother, without authority of a judge; but must be restored again, although the tutor's intromission was by the father's express orders on death-bed.

Fol. Dic. v. 1. *p.* 116. *Colvil, MS.*

*** *See* This case *voce* TUTOR and PUPIL.

1593. *January* 30. KING *against* SEATON.

No 2.

FOUND, that the donatar to the escheat of a party denounced for a crime, may, *brevi manu*, intromit with the rebel's moveables, but cannot enter to possess his lands, which fall not under single but liferent escheat; and so must abide a declarator.

Fol. Dic. v. 1. *p.* 115. *Haddington, MS.*

*** *See* This case *voce* ESCHEAT.

1598. *February.* LAIRD of CREICH *against* DAVID MURRAY.

No 3.
Found, that the King may enter *brevi manu* to any part of his annexed property, of which the feu is not lawful, without any warning or other order.

THE Laird of Creich pursued David Murray of Auchtermuchtie, master stabler to his Majesty, by ejecting him furth of the lands of Darne, pertaining to him in heritage.—It was *allaged*, That the defender ought to be assoilzied, because the said lands being a part of his Highness's annexed property of Fife, never lawfully set, after a lawful dissolution, for augmentation of his Highness's rental, it was leisom to the King *brevi manu* to enter to the possession of the same; and so the defender having the King's command committed the ejection. ——It was *answered*, That the pursuer being heritably infeft, and he and his predecessors, by virtue of the infeftments, being in possession of the said lands

No 3. above one hundred years, they could never be lawfully dispossessed without a warning, especially seeing the infeftments and rentals contained a feu-mail entered in the King's rolls, paid and made count of in the checker. Notwithstanding of the which allegeance, the LORDS found the exception relevant, and assoilzied from the ejection.

Fol. Dic. v. 1. *p.* 115. *Haddington, MS.*

1628. *January* 31. NASMITH *against* HUME.

No 4.
The proprietor of the teinds of another person's land, cannot intromit *brevi manu.*

IN a spuilzie by James Nasmith against Hume of Carrolside, the defender defending himself with a tack of the teinds alleged spuilzied, whereupon he had served inhibition, and, conform thereto, he had meddled with the teinds libelled; he *alleged*, That he could not be repute a spuilzier in so doing, conform to a lawful right, specially to produce this action against him, at his instance, who had no right to these teinds, and who, if he had intromitted therewith, would have been subject in spuilzie to this same excipient therefore.—This exception was repelled, for the LORDS found, That albeit the pursuer had no right to the teinds libelled, and the defender had right to the samine only, yet that the defender could not, *brevi manu*, without a warrant of a judge, or sentence, enter himself to the possession of these corns, which were sown and win by the pursuer, from off the land pertaining to the pursuer in heritage, and that he could not enter to take the teind at his own hand, without concourse or consent of the pursuer, who was heritor and labourer of the land, as said is, he not concurring with the defender to the teinding of the same, and to his intromission therewith.

Act. *Nicolson & Burnet.* Alt. *Lawtie.* Clerk, *Scot.*

Fol. Dic. v. 1. *p.* 115. *Durie, p.* 337.

*** The same case is reported by Spottiswood:

IN actions of spuilzie where diverse parties are convened after litiscontestation, it divides among them, *pro virilibus portionibus.*

James Nasmith of Possaw pursued Mr John Hume of Carrolside for spuilzie of the teind sheaves of Coldingknows.—*Answered*, That he had right thereto by virtue of a tack comprised from the Laird of Coldingknows by the Laird of Weems, and assigned to him.—*Replied*, Albeit he had never so good right, yet he should never have intromitted with his teinds against his will, till first he had served inhibition, and gotten decreet thereupon before the Lords; which was found relevant, and the exception repelled: For none can enter into any man's possession without his own consent, but by order of law, albeit his right were never so good.

Spottiswood, (EJECTION.) *p.* 90.