

should be admitted, the one founded upon writ, and the other agreeing to good reason, law, and equity, *quia volenti non fit injuria*.

Fol. Dic. v. 1. p. 251. Colville, MS. p. 434.

No 5.

1623. January 18.

DRUMKILLO against LAING.

IN an action of ejection pursued by the laird of Drumkillo against one Laing and three others, for ejecting him furth of lands pertaining to him as heritor, tacksman, or as mailer; the cause being concluded, no defender compearing, the parties assoilzied, because the pursuer proved none of his titles neither by writ nor witnesses. In that cause, I proponed, that in an ejection, if the pursuer had left *vacuam possessionem* and the defender had entered, using no violence, nor finding no interruption, that the action might be sustained to re-possess the pursuer, but it was not reason to snare the possessor with violent profits, he having used no sort of violence, but rather to sustain it for intrusion; which THE LORDS seemed to allow.

Fol. Dic. v. 1. p. 251. Haddington, MS. No 2726.

No 6.
Found as above.

1628. November 21.

BRUCE against BRUCE.

IN an ejection Bruce against Mr Robert Bruce, who being pursued at the instance of one as mailer to another; THE LORDS sustained the action, and the pursuer's title as mailer was sustained to produce that action, albeit the person to whom the pursuer condescended himself to be mailer, had no right to the lands out of which he was ejected; and albeit he to whom he was mailer was decerned to remove at the instance of that defender, who was convened as ejector; which decret was given against the tenants also, who were possessors of the lands; after whose removing, for obedience of the sentence, the pursuer intruded himself in the void possession viciously; so that he could not thereby have action of ejection, seeing he himself might be convened as succeeding in the *vice*; notwithstanding whereof the ejection was sustained; for THE LORDS found, that the pursuer being once possessor *sive jure, sive non*, the defender could not at his own hand, without order of law, put him from that possession, nor enter thereto, but by warrant of law, albeit the person to whom the pursuer was mailer, was decerned to remove at the defender's instance.

No 7.
No person has interest to pursue ejection but the actual and natural possessor of the land. A party cannot pursue another for ejecting the pursuer's tenants. Action of ejection is competent at the instance of a possessor of lands for ejection of his servants, hynds, and cottars.

Act. *Advocatus & Belches.*Akt. *Nicolson & Chaip.*Clerk, *Hay.*