

No 2. sown by him, as said is; which allegiance the LORDS found relevant, and therefore admitted the same to the defender's probation.

Fol. Dic. v. 1. p. 482. Colvil, MS. p. 235.

1627. January 31. HAY against LA. BORTHWICK.

No 3.

In a removing pursued by Walter Hay against Lady Borthwick, the LORDS found a sasine alleged upon for the defender, being anterior to the pursuer's sasine and comprising, whereon it proceeded, the same being clad with a year's possession, to be sufficient to exclude this pursuit of removing; albeit it was *replied*, that the pursuer's right was clad with real possession of the lands controverted, by the space of six or seven years; and albeit the defender's sasine was before the pursuer's right, and that the defender was a year in possession; yet seeing that possession was vitious, the defender having intruded herself therein, and it not being apprehended by any legal manner, it could not be a ground, although her right was first, at her own hand, to put the pursuer out of his possession, which he had lawfully apprehended by sentence upon his right; but she ought to have pursued upon her right, by some ordinary lawful pursuit, and not so summarily to take possession at her own hand, without lawful warrant; which reply was not sustained.

Act. Hope, Stuart & Lermonth.

Alt. Nicolson & Aiton.

Clerk, Scot.

Durie, p. 266.

1627. December 7. LAUDER against L. AITKIN.

No 4.

Removing sustained at the instance of a compliser infest and in possession, although the defender had been infest before the compliser, and had obtained a clandestine possession.

In a removing pursued by Lauder *contra* L. Aitkin, the LORDS preferred the pursuer, who had comprised the lands, and was infest therein by virtue thereof, and conform thereto, in possession year and day, by receiving of the mails and duties of that house comprised from the tenants, possessors to the defender, albeit he defended himself with an heritable infestment of that house libelled, given to him by him from whom the lands were comprised, before the comprising and denunciation thereof; and that he alleged that he was presently, conform to his said anterior heritable right, in possession of the house; which was repelled, and the pursuer preferred, in respect of his comprising, and possession year and day; and in respect he *replied*, That the possession which the defender had of the land presently, was acquired by him but only before this pursuit, by entering to the void possession of the house, when the tenant possessor thereof removed at the term; and so being obtained after such a clandestine and unlawful manner, could not be profitable to him against this pursuer, which was so found; neither was it found needful to put the pursuer to

any other action of intrusion, thereby to recover his possession; but admitted the same *ut supra* to be tried in this removing; and the defender also defending himself with the liferent-escheat, and general declarator obtained by him of this same author, of his heritable right, and which was declared before the said comprising and denunciation, and his possession foresaid; this exception was also repelled, in respect of the said reply, and because there was no special declarator.

No 4.

Act. ———.

Alt. *Foulis*.*Fol. Dic. v. 1. p. 482. Durie, p. 318.*1681. *January 18.*CANT *against* HERRIES.

No 5.

CATHARINE CANT being infeft in a tenement of land in the Stewarty of Kirkcudbright, obtained decret before the Stewart against Herries, for intrusion and violent profits; which being suspended, the suspender *alleged*, That the charger not having been in natural possession, had no interest to obtain a decret of intrusion.—It was *answered*, That though the natural possessor can only claim *juramentum in litem*, in violent profits, yet the master of the ground may pursue intrusion for dispossessing the intruder, and for the ordinary profits.

Which the LORDS sustained.

*Fol. Dic. v. 1. p. 482. Stair, v. 2. p. 835.**See APPENDIX.*