

No 14.

cannot be ascribed as a possession to maintain his right, seeing he had the like possession by tolerance, or only by oversight, from Redpath divers years before; so that he continuing that same possession which he had before only in tolerance, as said is, cannot be ascribed to his infetment; likeas he did nothing upon his infetment to make the same subsist in law before the pursuer's comprising and infetment, as he ought; for he might have made warning to the debtor, his author, or to the tenant to remove against the next Whitsunday, which he did not; and his arrestment and decret cannot be respected, being all after his public right, and so can derogate nothing to the pursuer; this reply was sustained to prefer the public right, albeit no more was done upon the said public right before this pursuit.

Act. Nicolson &amp; Dunlop.

Alt. Gilmore.

Clerk, Gibson.

*Durie, p. 786.*

No 15.

Daughters had been ejected upon decree of removing against their mother, to which they had not been made parties. Ordered to be replaced in possession.

1663. February 19.

SCOTS against Earl of HUME.

THE four daughters of Scot pursue an ejection against the Earl of Hume, out of some lands belonging to them. It was *alleged* for the Earl, Absolvitor; because he entered into possession by virtue of a decret of removing given at his instance *anno* 1650. It was *replied*, That the decret was only against the pursuer's mother, that they were never called nor decerned therein. The Earl *answered, first*, That the decret was against the mother to remove herself, bairns, tenants, and servants, and her daughters were in the family, being then young bairns; and he was not obliged to know them, they not being infet, but having only an old right, whereupon there was no infetment for 40 years the time of the decret.

THE LORDS, in respect of the defence, restricted the process to restitution and the ordinary profits, and decerned the Earl to restore them to possession instantly, but superseded payment of profits till both parties were heard as to their rights; for they found that the decret of removing could not extend to their children, and albeit they were not infet, yet they might maintain their possession upon their predecessor's infetment, how old soever, seeing they continued in possession.

*Stair, v. i. p. 183.*

No 16.

Effect of a disposition to moveables, with an instrument of possession.

1666. July 6.

CORBET against STIRLING.

CORBET of Concourse pursues a spuilzie of certain goods out of his house at Glasgow against William Stirling, who *alleged* absolvitor, because he had lawfully poynded them from his debtor, in whose possession they were. The pur-