

that it might be lawful for him to acquire, to his own behoof, rights affecting the pupil's heritage. No 69.

1712. *January 4.*—IN the count and reckoning at the instance of John Murray against James Murray, mentioned *supra June 16. 1710*, the LORDS found, that the defender having acquired a right to the lands of Conheath, from Elizabeth Maxwell, his mother, before the pursuer granted to him the factory, and entered to the possession by virtue of an apprising acquired by him during the factory, he could not alter or change the title of his possession, but must be understood to possess by virtue of the apprising, and be countable to the pursuer for his intromissions, ay and while the said right be extinct, or he denuded thereof in favour of the pursuer; but found, that after the said apprising is extinguished, or the defender denuded thereof, as aforesaid, he may compete for the possession.—See PACTUM ILLICITUM.

*Fol. Dic. v. 1. p. 599. Forbes, p. 411. & 569.*

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S E C T. VII.

Possession must be restored at the termination of the Right.

1583. *November.* CUNNINGHAM *against* COOK.

THE LORDS found, that, if a person who has heritable right to lands; shall thereafter take a tack thereof, he may be decerned to remove from the same (notwithstanding his heritable right) at the issue of the tack, without prejudice of his heritable right, *in judicio petitorio*.

*Fol. Dic. v. 1. p. 599. Colvil. Spottiswood.*

\* \* \* This case is No 26. p. 6424. *voce* IMPLIED DISCHARGE AND RENUNCIATION.

1591. GEORGE HARRIS *against* ANDERSON.

GEORGE HARRIS having pursued one Anderson for ejection, obtained decret, and for the violent profits comprised the lands; and after comprising, obtained infestment and sasine thereof, and warned the tenants to remove; and having gotten decret of removing, was, by virtue thereof, put in possession. This

No 71.

first decret of ejection being reduced afterwards by the defender's son, the comprising, and all that followed thereon, behoved to fall *in consequentiam*; and so Anderson younger sought to be repossessed. *Excepted*, That notwithstanding of the decret reductive, the pursuer could not be repossessed, because the defender obtained not possession of the lands, by virtue of his decret of removing, obtained after the comprising, but *aliunde et ex alia causa, et ab alio auctore*, and produced, *instanter*, to verify the same, certain writs and infeftments. *Replied*, That the defender could not be heard to allege any other cause of possession than that by which the pursuer and his father were dispossessed; for if so were, all decreets of repossession and redemption might always be eluded by alleging of forged titles *aliunde et ex alia causa*.—THE LORDS, *in presentia regis*, repelled the allegiance, and ordained the pursuer to be repossessed.

*Fol. Dic. v. 1. p. 599. Spottiswood, (POSSESSION.) p. 229.*

No 72.

1592. November 30. Mr WILLIAM LESLIE *against* TENANTS of NEWABBEY.

MR WILLIAM LESLIE pursued certain Tenants of the Newabbey, to remove at his instance, who was lawfully provided to the benefice, and had obtained letters conform to his provision and decret, ordaining all and sundry the tenants to make him payment. It was *excepted* by the tenants, That they could not be decerned to remove at his instance, because they bruiked as tenants to Mr Gilbert Brown, abbot, provided and in possession long before him. It was *answered* for the said Mr William, That the exception should be repelled, because he offered him to prove, that he was in possession by virtue of his title, by uplifting of the mails and duties of these same lands from the same defenders; which was found relevant by interlocutor.

*Fol. Dic. v. 1. p. 599. Haddington, MS. No 38.*

No 73.

1631. February 22. MURRAY *against* Lord YESTER.

IN a declarator of redemption of lands, the LORDS found that the conclusion of the libel, craving the defender to be decerned to renounce all right and title which he had to the lands any manner of way, ought not to be sustained, and that no sentence could follow, but to decern the defender to renounce all right which he had to these lands, derived from the pursuer, and no further.

*Fol. Dic. v. 1. p. 599. Durie.*

\* \* \* This case is No 45. p. 3711. *voce* EXECUTION.