

CONCURSUS ACTIONUM.

SECT. I.

Where different Actions arise upon the same fact, tending to the same end, the Pursuer cannot insist upon both.

1610. December 13. JOHNSTON against CHARTERIS.

IN an action of contravention, pursued by Mr John Johnston against Sir John Charteris of Hempfield, the LORDS found that they would grant no contravention against Hempfield, for uplifting of the mails and duties of the lands, whereupon decret of removing was given against Hempfield; and that because Mr John had obtained a decret of violent profits thereupon, which he might put to execution; and that notwithstanding Mr John was content to renounce his decret of violent profits.

Fol. Dic. v. 1. p. 185. Kerse, MS. fol. 232.

* * Haddington reports the same case :

He who obtained a decret of violent profits, against that man who found him caution of lawburrows, pursued contravention for the defender's wrongous meddling with the profits of his land, albeit he offered to renounce the execution of his decret, so far as may concern the bygone profits; yet the LORDS will not permit him to do it, and to pursue contravention upon that fact, for the which he had a rigorous action of violent profits, whereof he had made election by his former pursuit and decret.

Haddington, MS. No. 2049.

1611. November 29. SIR JOHN HEPBURN against CARCATTLE.

IN a contravention pursued by Sir Robert Hepburn against Patrick Carcattle, for contravening an act of caution found by him, by the occupation of the lands

No 1.

Where the party had made his election, and taken a decret of violent profits upon ejection, the LORDS refused to sustain contravention; and that although the pursuer was content to renounce his decret of violent profits.

No 2.

Found as above.