

No 7.

Who entitled
to bring an ac-
tion of ejec-
tion.

1610. July 24.

ANDERSON against YULE.

IN an action of ejection, pursued by William and Agnes Andersons, son and daughter to umquhile Bessie Scot, their mother, the relict of umquhile Thomas Anderson, who were tenants and mailers of the lands of Blacklandhead, to Mr Robert Bruce, being heritor of the lands of Gailvy and Gaithristen, whereof the said lands of Blacklandhead are proper part and pertinents, and at the instance of the said William, as heir to his said mother, and being in possession of the said lands, after his mother's decease, by tilling and sowing of the said lands, against John Yule, tenant to Mr Robert Bruce, for ejecting of the said William and Agnes Andersons furth of the said lands, it was *alleged*, That the pursuers could have no actions of ejection, because they were neither tenants, tacksmen, nor mailers, of the said lands; and in so far as the said William libels himself as heir to his mother, who was mailer, not relevant, because a mailer cannot have an heir. THE LORDS sustained the allegiance, and assoilzied.

Kerse, MS. fol. 191.

1615. January 10.

WATSON against LAW.

No 8.

Effect of ille-
gal ejection.

IN an action of succeeding in the *vice* pursued by Margaret Watson, relict of John Tweedy, skinner, against John Law, tailor, as succeeding in the *vice* of William Craig, against whom decret was given, at the instance of Richard Storie, for ejecting him furth of certain lands in Restalrig, it was *alleged* by the defender, that he ought to be assoilzied from restitution of the said pursuer, to said lands, because decret of removing was given at the instance of the Goodman of Westfield, *in anno* 1610, decerning the said Richard Storie to remove frae the said lands, and therefore, &c. To the which it was *answered*, That the allegiance was nowise relevant, *imo*, Because the defender derives no right from Westfield; *2do*, By the decret, whereby Craig is decerned to re-enter the said Richard Storie to the possession of these lands, *et sic spoliatus ante omnia est restituendus*; *3tio*, Long after the date of the said removing, the decret of ejection is given *in anno* 1607, and so the said defence being competent *ante sententiam*, and omitted, cannot now take away the sentence standing. To the which it was *answered*, *imo*, That John Law, tailor, has right from William Craig, which William Craig has right from Westfield. As to the other two, the defender's removing takes away *omne jus* and possession, that was competent to Richard Storie, and works as meikle as if he were entered; for if he had been entered, or in possession, all the time, he would have been violent possessor; and *last*, this exception was not competent to elide the ejection which was libelled *in anno* 1597; and the decret of ejection being given, the same cannot prejudice the said John Law, tailor, defender. THE LORDS, by interlocutor,