

EJECTION.

3609

should be admitted, the one founded upon writ, and the other agreeing to good reason, law, and equity, *quia volenti non fit injuria*.

No 5.

Fol. Dic. v. 1. p. 251. Colville, MS. p. 434.

1623. January 18.

DRUMKILLO against LAING.

IN an action of ejection pursued by the laird of Drumkillo against one Laing and three others, for ejecting him furth of lands pertaining to him as heritor, tacksman, or as mailer; the cause being concluded, no defender compearing, the parties assoilzied, because the pursuer proved none of his titles neither by writ nor witnesses. In that cause, I proponed, that in an ejection, if the pursuer had left *vacuam possessionem* and the defender had entered, using no violence, nor finding no interruption, that the action might be sustained to re-possess the pursuer, but it was not reason to snare the possessor with violent profits, he having used no sort of violence, but rather to sustain it for intrusion; which THE LORDS seemed to allow.

No 6.
Found as above.

Fol. Dic. v. 1. p. 251. Haddington, MS. No 2726.

1628. November 21.

BRUCE against BRUCE.

IN an ejection Bruce against Mr Robert Bruce, who being pursued at the instance of one as mailer to another; THE LORDS sustained the action, and the pursuer's title as mailer was sustained to produce that action, albeit the person to whom the pursuer condescended himself to be mailer, had no right to the lands out of which he was ejected; and albeit he to whom he was mailer was decerned to remove at the instance of that defender, who was convened as ejector; which decret was given against the tenants also, who were possessors of the lands; after whose removing, for obedience of the sentence, the pursuer intruded himself in the void possession viciously; so that he could not thereby have action of ejection, seeing he himself might be convened as succeeding in the *vice*; notwithstanding whereof the ejection was sustained; for THE LORDS found, that the pursuer being once possessor *sive jure, sive non*, the defender could not at his own hand, without order of law, put him from that possession, nor enter thereto, but by warrant of law, albeit the person to whom the pursuer was mailer, was decerned to remove at the defender's instance.

No 7.
No person has interest to pursue ejection but the actual and natural possessor of the land. A party cannot pursue another for ejecting the pursuer's tenants. Action of ejection is competent at the instance of a possessor of lands for ejection of his servants, hynds, and cottars.

Act. *Advocatus & Belches.*

Act. *Nicolson & Chaip.*

Clerk, *Hay.*

No. 7. November 26. 1628—In the ejection Bruce against Bruce, mentioned 21st November 1628, an exception was admitted to elide the ejection which was pursued by the pursuer *super hoc titulo*, as mailer to another person condescended in the summons, to elide that title viz. that the pursuer had taken the lands libelled, before the alleged time of the ejection, from the excipient's self, and so became tenant thereof to the pursuer, whereby he could not pursue as mailer to another; which exception was found relevant; but found that it ought to be proven *scripto vel juramento partis*; this was also found relevant, where the defender alleged, that the pursuer had accepted a tack from the defender from Martinmas to Martinmas, which immediately preceded the time of the ejection, which was alleged to be in December; before which Martinmas, which was the issue of the setting, after the crop and corns were led and win, the pursuer voluntarily transported himself, wife and family, and goods wherewith he laboured the ground, *et omnia instrumenta fundi*, and left the same void, so that the defender in entering to the vacuous possession of his own land, could not be found an ejector: This voluntary removing was found relevant also, after the issue of the said term of the tack, albeit there was no warning made to the pursuer before to remove, which warning was not found to be needful in this case, where the setting was made from Martinmas to Martinmas, and that warning could not be made at Martinmas; and if it should not have been made till Whitsunday thereafter, if the lands had not been laboured *medio tempore*, the defender would have wanted a year's farm, wherein the pursuer, when he removed, would not have been liable. In this process, THE LORDS found, that no person had interest to pursue any action of ejection, but only the actual and natural possessors of the land, and that none could pursue the same, for the deed done to his tenants, in ejecting of them, but it is competent to the master for ejecting of his servants, hynds, and cottars; for the master by them had natural possession, but not by the possession of his tenants, *vide* March 2d 1637, Keith, *voce* HUSBAND AND WIFE. The like done 19th June 1637, in an ejection betwixt Crowner Ruthven and Gairden*, where an exception of voluntary removing, and transporting of the goods by the pursuer of that ejection to another house, albeit there preceded no warning, was found relevant, to be proven, *prout de jure*, without necessity to prove it *scripto vel juramento*.

Act. Stuart.

Clerk, Hay.

Fol. Dic. v. 1. p. 252. Durie, p. 398 & 400.

* See APPENDIX.