

But here there was more, seeing she retained it by her family and servants ; and, *esto* they had deserted it, either through terror or collusion, that relinquishing cannot prejudice her ; else tenants and servants could easily betray their masters. REPLIED,—He offered to prove they removed voluntarily.

The Lords found, Though this were proven, it was not relevant to divest her of the possession, without her own special warrant and deed ; and therefore would take no trial of the way and manner of their removing or abandoning the possession. Then the Doctor craved she might be put under caution for the rent. The Lords found, Seeing there was no process, she could not be obliged thereto.

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1696. July 29. The LADY CARDROSS *against* The EARL of TRAQUAIR.

PHEUDO reported the Lady Cardross against the Earl of Traquair, who defended himself with the benefit of a possessory judgment, by virtue of appraisings, and other singular titles in his own and his mother's person. ANSWERED,—That to make a legal possessory judgment, besides a colourable title, there was likewise requisite *bona fides*, and lawful possession ; but here the Earl's possession was plainly vitious ; for his mother and he had intruded themselves into the possession in her brother's minority, by the negligence of his tutors ; and the *vitia possessionis* are known in law to be when the entry is either *vi, clam, aut præcario*. *2do*. It was interrupted by a decret obtained by Lady Halton, the other co-heir, against the Earl for her half.

The Lords considered this possession was not precisely for seven years, but had continued more than double that time, and so could not be reputed clandestine ; and, besides the general point, How far an interruption at the instance of one co-heir will operate for another, (from which point they abstracted at this time,)—seven years had run even since that interruption ; and therefore they inclined to sustain the possessory judgment. But, at the intervention of some of the Lords, it was delayed till November.

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1696. July 31.

ROBERTSON *against* MURRAY.

IN a competition between Robertson, as nominated the King's Master-tailor by King James, and Murray who had a gift of the said office from King William ; the Lords were clear in the general, that a gift, during life, given by King James before October 1688, when the Prince of Orange set out upon his expedition, was preferable, and not revocable by a posterior gift of King William. But here the question arising anent making the beggars' blue gowns, and there not being a *modus vacandi* expressed in Robertson's gift *quoad* that, and one Calderwood, who was *in titulo*, being then on life ; they preferred Murray's gift, *quoad* this particular employment of the gowns only.

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