

1759. August 3.

DAVID SUTHERLAND of Pronsie *against* GEORGE GRAHAM of Drynie.

No 32.
An apparent heir cannot remove a tenant possessing under a tack granted by a person who had no right to the lands.

JAMES SUTHERLAND of Pronsie, after possessing the estate more than three years, died in apparenacy; and was succeeded by David Sutherland, who took possession of the estate without making up titles.

Isabella Grant, the relict of James, continued her husband's possession of the lands of Aberscross, which she afterwards let in tack to George Graham of Drynie; and this tack was renewed to Graham by her second husband, Dr Gordon.

David Sutherland brought an action of removing against Graham, after his lease was expired; who *contended*, That an apparent heir, without infeftment, has no title to insist in an action of removing.

Answered, The relict of James Sutherland, from whom the defender derived his possession, had herself no right to possess, although she had a personal obligation from her husband for an annuity; for that any other person had as good a title to seize the vacant possession as she had. It will not be pretended, that the estate of an apparent heir is to belong to the first occupant. And if this were allowed, the illegal possessor, who takes hold of the lands which were in the natural possession of the defunct, would not even be obliged to pay any rent.

Though the apparent heir cannot, without infeftment, remove those who derive their possession from the defunct; yet, where there is no person deriving a right from the defunct, he may enter into the natural possession himself; and as a necessary consequence, he may remove those who intrude themselves into the possession, without deriving right from the defunct. Where there are tenants, the apparent heir enters to the possession of the rents; where there are no tenants, he has a right to the natural possession of the subject, and he is entitled to vindicate this right by an action of removing.

“THE LORDS assoelzied from the action of removing.”

Act. *Burnett*.

W. ✱

Fol. Dic. v. 3. p. 258. Fac. Col. No 195. p. 348.

1759. November 21. JAMES KNOX *against* IRVINE and FORSYTH.

No 33.
The son of an heiress possessing in a state of apparenacy falls under the act 1695, not.

By the death of Sarah Irvine, proprietrix of the land of Kirkconnel, her surviving husband William Knox was entitled to the courtesy. Dr Knox the heir-apparent was allowed by his father to possess the bulk of the land, by levying rents and giving tacks in quality of heritable proprietor, assuming that designation in every one of his deeds. Particularly, he set a tack of certain