

I N T R U S I O N .

1542. July 13. LAIRD OF INNES *against* LAIRD OF CALDER.

THE LORDS absolved *ut libellatur* the Laird of Calder from a summons of wrongous intromitting with the mails and duties of the lands of ———, raised at the Laird of Innes's instance, because he libelled not that he was in possession by virtue thereof, and the Laird of Calder showed his infestment, and was in possession thereof; and so he being in possession *cum titulo*, intromitted justly ay and while the title was reduced.

Fol. Dic. v. 1. p. 482. Sinclair, MS. p. 40.

1573. January 27. CRAIG *against* INCHBRECKIE.

ANENT the action pursued by H. Craig against the Laird of Inchbreckie, for spoliation of certain corn which grew upon his mailing, which he had of the said Laird, which corns were sown by him, and great part thereof shorn and stoukit, and another part growing upon the said mailing, which hail corns the defender spulzied from the pursuer; the defender *alleged* he did no wrong in intromitting with the said corn; as is alleged, because the defender caused lawfully warn the pursuer to remove from his said lands and mailing, whereon the said corn grew, at the feast of Whitsunday, and year before the alleged spuilzie, at which term the pursuer removed himself and goods of his own will; and the corn then growing on the ground the pursuer cut, and led the same away off the land, and left the same void and redd; which being known to the defender, thereafter he entered his ploughs and tilled the said mailing, and sowed it with his own corn; and albeit the pursuer came after and sowed upon his manner the said mailing over again with a small quantity of corn, the lands being already well sown by the defender, he did no wrong in the intromitting and away taking of the said corn, which grew upon the said mailing, tilled and

No 1.

No 2.

A party having removed from lands, it was found that he could not afterwards pursue intrusion against him who entered *in vacuam possessionem*.

No 2. sown by him, as said is; which allegiance the LORDS found relevant, and therefore admitted the same to the defender's probation.

Fol. Dic. v. 1. p. 482. Colvil, MS. p. 235.

1627. January 31. HAY against LA. BORTHWICK.

No 3.

In a removing pursued by Walter Hay against Lady Borthwick, the LORDS found a sasine alleged upon for the defender, being anterior to the pursuer's sasine and comprising, whereon it proceeded, the same being clad with a year's possession, to be sufficient to exclude this pursuit of removing; albeit it was *replied*, that the pursuer's right was clad with real possession of the lands controverted, by the space of six or seven years; and albeit the defender's sasine was before the pursuer's right, and that the defender was a year in possession; yet seeing that possession was vitious, the defender having intruded herself therein, and it not being apprehended by any legal manner, it could not be a ground, although her right was first, at her own hand, to put the pursuer out of his possession, which he had lawfully apprehended by sentence upon his right; but she ought to have pursued upon her right, by some ordinary lawful pursuit, and not so summarily to take possession at her own hand, without lawful warrant; which reply was not sustained.

Act. Hope, Stuart & Lermonth.

Alt. Nicolson & Aiton.

Clerk, Scot.

Durie, p. 266.

1627. December 7. LAUDER against L. AITKIN.

No 4.

Removing sustained at the instance of a compriser infest and in possession, although the defender had been infest before the compriser, and had obtained a clandestine possession.

In a removing pursued by Lauder *contra* L. Aitkin, the LORDS preferred the pursuer, who had comprised the lands, and was infest therein by virtue thereof, and conform thereto, in possession year and day, by receiving of the mails and duties of that house comprised from the tenants, possessors to the defender, albeit he defended himself with an heritable infestment of that house libelled, given to him by him from whom the lands were comprised, before the comprising and denunciation thereof; and that he alleged that he was presently, conform to his said anterior heritable right, in possession of the house; which was repelled, and the pursuer preferred, in respect of his comprising, and possession year and day; and in respect he *replied*, That the possession which the defender had of the land presently, was acquired by him but only before this pursuit, by entering to the void possession of the house, when the tenant possessor thereof removed at the term; and so being obtained after such a clandestine and unlawful manner, could not be profitable to him against this pursuer, which was so found; neither was it found needful to put the pursuer to