

No 4.
man's relict,
who had no
title in her
own person
to produce,
the tack hav-
ing been only
during life ;
and this be-
cause she had
continued in
possession
three months
after her hus-
band's de-
cease and be-
fore the ejection.

libellit, that the said land appertained to her husband in tack and assedation, and she continued in possession after his deceis be the space of three months before the said ejection, and had intromission with the said corns and guidis as *necessaria intromissatrix*. It was *allegit*, That she could have no action to persew the said ejection and spoliation, because she qualified no title into her aine person; for the tack and assedation was set unto her husband only, and so it expyrit with him at the time of his deceis. To this was *ansrit*, That, in respect of her summons, that she continued into possession be the space of three months after her husband's deceis, and before the ejection, and was necessary intromissatrix with the guidis and gear, she had sufficient action, whilk was so fand be the Lords.

Fol. Dic. v. 1. p. 252. Colvil, MS. p. 361.

* * Spottiswood reports the same case.

A wife called Frazer pursued certain persons for ejecting her forth of certain lands, and spuilzieing of certain corns from her. *Alleged*, She could not pursue for ejection and spoliation, because she qualified no title in her own possession, for there was only tack and assedation of that land to her husband during his own lifetime, and so expired with him. *Replied*, That she having continued in possession three months after her husband's decease and before the ejection, and having intromitted necessarily (as *necessaria intromissatrix* with the corns and goods) she had good action. The which was found by the Lords.

Spottiswood, (EJECTION.) p. 92.

1588. *January.*

MONCUR *against* CAMPBELL.

No 5.
Entry in *vacuum possessionem* without violence does not infer ejection.

THERE was a woman called Moncur that pursued one Campbell for the violent ejecting her furth of certain lands. It was *answered*, that he had committed no ejection, because the pursuer renounced and resigned over the said lands, furth of the which she alleged her to be ejected, into the Lord Argyle's hands, in favours of the defender, and he, by virtue of the said infestment and sasine taken thereupon, entered in possession, and the pursuer willingly flitted and removed herself and her tenants off the ground, and left the ground void and redd. It was *replied* by the pursuer, and she offered her to prove, that notwithstanding of the said alleged renunciation, she remained in possession of the said ground, by the space of five years thereafter, and she *in odium spoliatis aut deficientis* ought to have the same to probation, and the allegeance made that she willingly removed was direct contrary; and albeit it meets and has place into a removing, as has been sundry times observed before the Lords, yet it never meets an ejection. THE LORDS, after many reports, found that the exception and duply

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

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

No 5.

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.

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

No 6.
Found as above.

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.*Akt. *Nicolson & Chaip.*Clerk, *Hay.*