

## No 7.

Who entitled  
to bring an ac-  
tion of ejec-  
tion.

1610. July 24.

ANDERSON against YULE.

IN an action of ejection, pursued by William and Agnes Andersons, son and daughter to umquhile Bessie Scot, their mother, the relict of umquhile Thomas Anderson, who were tenants and mailers of the lands of Blacklandhead, to Mr Robert Bruce, being heritor of the lands of Gailvy and Gaithristen, whereof the said lands of Blacklandhead are proper part and pertinents, and at the instance of the said William, as heir to his said mother, and being in possession of the said lands, after his mother's decease, by tilling and sowing of the said lands, against John Yule, tenant to Mr Robert Bruce, for ejecting of the said William and Agnes Andersons furth of the said lands, it was *alleged*, That the pursuers could have no actions of ejection, because they were neither tenants, tacksmen, nor mailers, of the said lands; and in so far as the said William libels himself as heir to his mother, who was mailer, not relevant, because a mailer cannot have an heir. THE LORDS sustained the allegiance, and assoilzied.

*Kerse, MS. fol. 191.*

1615. January 10.

WATSON against LAW.

## No 8.

Effect of ille-  
gal ejection.

IN an action of succeeding in the *vice* pursued by Margaret Watson, relict of John Tweedy, skinner, against John Law, tailor, as succeeding in the *vice* of William Craig, against whom decret was given, at the instance of Richard Storie, for ejecting him furth of certain lands in Restalrig, it was *alleged* by the defender, that he ought to be assoilzied from restitution of the said pursuer, to said lands, because decret of removing was given at the instance of the Goodman of Westfield, *in anno* 1610, decerning the said Richard Storie to remove frae the said lands, and therefore, &c. To the which it was *answered*, That the allegiance was nowise relevant, *imo*, Because the defender derives no right from Westfield; *2do*, By the decret, whereby Craig is decerned to re-enter the said Richard Storie to the possession of these lands, *et sic spoliatus ante omnia est restituendus*; *3tio*, Long after the date of the said removing, the decret of ejection is given *in anno* 1607, and so the said defence being competent *ante sententiam*, and omitted, cannot now take away the sentence standing. To the which it was *answered*, *imo*, That John Law, tailor, has right from William Craig, which William Craig has right from Westfield. As to the other two, the defender's removing takes away *omne jus* and possession, that was competent to Richard Storie, and works as meikle as if he were entered; for if he had been entered, or in possession, all the time, he would have been violent possessor; and *last*, this exception was not competent to elide the ejection which was libelled *in anno* 1597; and the decret of ejection being given, the same cannot prejudice the said John Law, tailor, defender. THE LORDS, by interlocutor,

found the exception relevant to purge the ejection, not only for the re-possession to the lands, but also for eliding of the violent profits of all the years, from the warning made to the said Richard Storie.

No 8.

*Kerse, MS. fol. 191.*

1615. February 7. M'CULLOCH against \_\_\_\_\_.

No 9.

IN an action pursued by David M'Culloch, donatar to the liferent of Samuel Blackburn, for removing from certain tenements of land, the LORDS found no process, while the rebel's sasines were produced, and found that he ought to call for the same to be exhibited, and then to pursue.

*Kerse, MS. fol. 239.*

1621. December 14. L. FALDOWNSIDE against L. BENNERSIDE.

No 10.

FALDOWNSIDE having comprised L. Bennerside's lands, pursues a removing against him, upon his sasine following thereupon, who compeared, and *alleged*, That the pursuer had passed from that comprising, in so far as for the same sums for the which that comprising was deduced, whereupon the pursuit was founded, and for other sums joined thereto, the pursuer had *de novo* comprised the same lands, and taken sasine thereupon, whereby the first comprising was, in effect, passed from and ceased. THE LORDS repelled that allegiance, and found, that, notwithstanding of the last comprising, which comprehended also the sums of the first comprising, the first was not taken away, but that the pursuer might use the same, and pursue thereupon.

Act. Balbes.

Alt. Stuart.

Clerk, Gibson.

*Durie, p. 6.*

1624. November 19. L. LAGG against His TENANTS.

IN an action betwixt the L. of Lagg and his Tenants, the LORDS sustained a removing, pursued at Lagg's instance, for removing from lands, upon a sasine given to him of the superiority only of these lands, which sasine of the naked superiority they found to be a sufficient title to the pursuer for producing removing thereupon at his instance, from the property of the same lands, against any one who could not allege an heritable right of property, or some other right, whereby they might maintain themselves in the possession of the said lands; and which the LORDS found, albeit the defenders *alleged*, That there was

No 11.

A right to the superiority alone found to be a sufficient title to remove from the possession of land persons exhibiting no right to possess.