

the troubling and molestation. *Hoc in fructibus artificialibus, non itaque in naturalibus.*

No 2.

Fol. Dic. v. 1. p. 252. Colvil, MS. p. 245.

1581. May.

ANDERSON against KINNEIR.

THERE WAS a woman callit Kinneir, that was persewit for ejection and spoliation be ane Anderson, for ejecting of him furth of a mill and mill lands of William Anderson. The libel being admittit to probation, and being fund proven against certain other persons, the question fell out, the woman, the time of the ejection, being in Edinburgh, and remained there twenty days thereafter, and then coming to the house, and remained with her sons, who were the ejectors, and having intromitted with certain geese, and ane gray mare, whilk were ganging in the field *tanquam derelicta*, and her intromission with the same was proven onlie be ane witness, if she sould be decernit as ejector.—THE LORDS, after long reasoning, decernit her to have ejectit and committit spulzie; for it was *allegit* be some of the LORDS, that notwithstanding she was absent at the deed doing, yet be coming there, and remaining with her sons, albeit it was *ex longo intervallo et temporis tractatu*, she ratifiet and approvit all the deed as if it had been done at her command and assistance, *et sic ratihabitio retro trahitur, et mandato equiparat., et maxime quando alicujus nomine quidpiam gestum est, de quo vide reg. Juris in sexto; tamen bona pars dominorum in contraria fuerant opinione.*

Into the same action and cause, the matter being fund proven, the quantitie was referrit to the aith of the persewar; and being sworn, gave in ane quantitie that was sworn, almost agreeing to the libel. THE LORDS, nevertheless, after long reasoning among themselves, votit, for the most part, that they wald modify the quantity and prices, albeit the party had sworn, and were of that mind, that the common law sould be followed, *quod præmiss. taxatione judicis, prout in cap. super., extra de his qui vi; et maxime apparebat dominis*, that all things contained in the libel was rigorously socht, and that there was appearance of perjury, *et nonnulli dominorum in contraria fuerant opinione*; yet aither the parties aith sould be followit furth and tane, as was the form of the ancient practic, or else the LORDS, *in rebus ejusmodi ordinis et magni momenti*, should receive the modification to their ain selves, as they commonlie usit to do before the oath.

Fol. Dic. v. 1. p. 252. Colvil, MS. p. 300.

1583. May.

FRASER against ———.

THERE WAS a woman callit Fraser, that persewit certain persons for the ejection of her furth of certain lands, and the spoliation of certain corns. She

No 3.

A party, tho' not present at the deed of ejection and spoliation, and a long time thereafter absent, was nevertheless found guilty of the deed by ratification of it, which ratification was inferred by her coming to the house whence the pursuer was ejected, and living there with her sons, who had committed the ejection.

No 4.

Process of ejection was sustained at the instance of a tacks.

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