

1583. *February.* HAMILTON *against* CRAWFORD.

No 4.

IN a removing pursued by the Earl of Arran Stuart, against one Crawford, to remove from Kinneil, the defender *alleged*, He was tenant to the Earl of Arran Hamilton. Afterwards the same Crawford being pursued to remove by the Earl Hamilton; and the defender *alleging*, That the pursuer had produced no title to instruct his precept of warning and summons; his former confession was obtruded to him by way of reply, and found by the LORDS, that the defender's judicial confession, (though not excepted by the pursuer,) was sufficient to prove against himself, and serve *loco tituli* to the pursuer.

Spottiswood, (REMOVING.) p. 277.

. Colvil reports this case :

THE umquhile Earl of Arran Hamilton pursued one Crawford to flit and remove from the kirklands of Kinneil. It was *answered* by the defender, That the pursuer produced no title to instruct his precept of warning and summons. It was *replied*, That the said Crawford being pursued for the said cause by the Earl of Arran Stewart, did allege, for his defence, that he was tenant to the said Earl Hamilton, which confession made of a sasine was a sufficient title, *quia confessio et res judicata paribus passibus ambulant, L. unica C. De confessis, et Bart in L. 6. D. Ibidem.* It was *answered*, and reasoned among the Lords, That the said confession was not accepted by the other party, nor no instruments nor documents taken upon the acceptation of the same, and so the defender ought not to be prejudged by such a naked assertion, rather than a confession accepted by the party in judgment, and howsoever it was the pursuer could not be said to found his intention upon the defender's confession, nor upon a title, as was in the defender's hands, appertained to the defender. THE LORDS, for the most part, found, by interlocutor, that the judicial confession made by the defender, albeit it was not accepted by the pursuer, was sufficient to prove against the defender, *licet nonnulli fuerunt in contraria opinione.*

Colvil, MS. p. 387.

1591. ———. STUART *against* SHARP.

No 5.
Effect of possession.

COLONEL STUART, cessioner and assignee, constituted by John Steil to his liferent of the lands of Houston, warned certain tenants to flit and remove. *Excepted*, That they had tacks for terms to run, from them who had right to set them, viz. Mr John Sharp, who was heritable proprietor of the said lands, and who had been in possession of them, he and his authors, for the space of 38 years. *Replied*, That any infestment Mr John, or his authors had, the same