

good defence for tenants, that their master is not called; but in the possessory actions for mails and duties, they did not see the necessity, seeing the master may compear and defend. Some of the Lords were for allowing her to cite Weem *incidenter* in this process; but the plurality repelled the tenant's objection, and decerned in the relict's action; yet superseded extract for a time, that Weem's tutors (he being minor) may search for his papers, and on production debate for his interest, which would be shorter than for the tenants to suspend again upon double poinding and distress.

No 104.

*Fountainball, v. 2. p. 141.*

See REMOVING.

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S E C T. XXII.

Citation in Processes of Abstracted Multures.

1610. December 1. FENTON *against* The TENANTS of MATHERTIE.

HE who is denuded of his heritable right, by resignation thereof made in favour of him who is infest, holden of the King, cannot use that infestment as a title of his pursuit; neither can the concurrence of him who is infest sustain the pursuit; because they are not compatible, and the exception is merely *exclusivum juris agentis*.

No 105.

A man may pursue the possessor of lands for abstracting of his corns from the pursuer's mill, albeit he call not the heritor, because the tenant is called *super facto proprio*; but that decret given against the tenant, will not prejudice the master of his defence or right.

*Fol. Dic. v. 1. p. 140. Haddington, MS. No 2029. & No 2030.*

1628. March 19. ADAMSON *against* TENANTS of Strathlaw.

AN instrument of sasine, being only the assertion of a notar, is not sufficient to verify a thirlage; nor will it furnish a man interest to pursue for abstracted multures, except the charter containing thirlage be produced, which will be sustained to be proven in process.

No 106.

No process was found against any tenants for abstracted multures, where their master the heritor was not summoned; although it was alleged that they were in continual use of bringing their corns to the pursuer's mill, as thirled thereto,

March 20.—No process against the tenant for abstracting the multures, if the master, who is heritor, be not summoned; albeit it be *alleged*, that they were in continual use of bringing their corns to the pursuer's mill, as thirled thereto, and of paying the accustomed dues of thirlage past the memory of man.