

were intromitted with by the defender; which reply was not sustained, nor action granted for the profits.

No 264.

Act. *Nicolson* younger.Alt. *Russel*.Clerk, *Gibson*.*Fol. Dic. v. 2. p. 118. Durie, p. 113.*1627. *March 16.*HAY *against* KER.

AN ejection being pursued by Walter Hay *contra* Mark Ker, and the action, in so far as was pursued by ejection, being elided by the act of Parliament 1579, anent prescription, because it was not pursued within 3 years after the deed libelled; the LORDS nevertheless sustained the action for restoring of the pursuer to the possession of the land, and for payment of the ordinary duty to him which he was in use to receive from the tenants of the lands the years before the ejection, and of all the years since the defender entered to the lands; and so the pursuer passing from the pursuit, so far as concerned any violent deed of ejection, or higher profits of the lands, and converting the same to an intrusion in the pursuer's possession, and pursuit for the ordinary duties there-through for years bygone, and restoring of the possession of the ground thereafter, the action was sustained. (See PROCESS.)

No 265.

An action of ejection sustained, after three years, to the effect of restoring to possession, and for payment of the ordinary rent during the defender's possession.

Act. *Hope & Lermouth*.Alt. *Nicolson & Ayton*.Clerk, *Scot*.*Fol. Dic. v. 2. p. 118. Durie, p. 292.*1631. *July 26.*MAXWELL *against* L. EARLSTOUN.

ALEXANDER MAXWELL, as assignee to Katharine Glendinning, pursuing umquhile Gordon of Earlstoun, in the year 1626, for intromitting with certain sheep pertaining to the cedent, the intromission being *in anno* 1604, and the pursuit not intended till 1626, as said is, and the defender being dead, the action is transferred in his son and heir, and the profit of the goods was also craved since his father's intromission. In which action (being a wrongous intromission, and wherein no spuilzie was craved, nor could be, not being pursued *debite tempore* within three years), the LORDS found, That no profits could be granted, and that the pursuer in wrongous intromission had no action therefor; but declared that they would consider of the parties' interest at the advising of the procees, after probation deduced and renounced.

No 266.

Found in conformity to Dunmuir against Payweel, No 264. p. 11068.

Act. *Cunningham*.Alt. *Nicolson, Mowat, & Gilmore*.Clerk, *Scot*.*Fol. Dic. v. 2. p. 118. Durie, p. 601.*