

No 22. *non computandis in sortem*, taking a posterior right, whereby he was to enter for payment of L. 19,000, *fructibus non computandis in sortem*, he derogated so far from the first, that he must possess *primo loco* by the last, seeing the first is not reserved; *2dly*, The late Earl could only be understood to enter in possession by that right, or the former heritors to relinquish the possession to him upon that right, which then had *paratam executionem*, and could then instantly have forced them to quit the possession; but that was only the last contract, and last decret, whereupon the late Earl had obtained sentence; in his own person *in anno 1643*, when he entered in possession. But as for the first contract and decret of possession, it had not then *paratam executionem*, never being established in the persons of the heirs of line, much less in the person of the late Earl, who had right from the heirs of line by assignation himself, being only heir-male.

THE LORDS found, That the possession was only to be ascribed to the last decret, which only had *paratam executionem primo loco*, without prejudice to the Earl, if that right were exhausted, to defend himself with the first right in the next place.

Stair, v. 1. p. 695.

No 23. 1682. November 4.

CAMPBELL against CHRISTIE.

IN an action of spuilzie pursued by Duncan Campbell against Christie, wherein the libel being admitted to probation, and it being only proved by the depositions of the witnesses against the defender, that one of the beasts spuilzied was in his possession; the LORDS, in respect it was a depredation, found the having of one of the goods taken away by way of depredation, made the defender liable for the whole goods which were proved to have been spuilzied, and the profits thereof, albeit it was not proved, that the defender had any accession to the depredation otherwise than that he had one of the beasts spuilzied in his possession, as said is.

P. Falconer, No 24. p. 13.

1682. November 11.

LISK against SCOT.

No 24.

IN an action of spuilzie pursued at the instance of Lisk against Scot, upon this ground, That Scot having set to Lisk a house in Aberdeen, and Lisk having entered to possession of the said house, the landlord, within three months after Whitsunday, before there was a term's mail due, excluded Lisk from possession of the house, by putting a padlock thereon, and so secluded him from the use of his moveables, and refused to allow him entrance to the house;—the LORDS sustained the spuilzie, and allowed Lisk *juramentum in litem*.

P. Falconer, No 27. p. 14.