

1583.

*TRANSACTIO de spolio*, with any one of the defenders, (either principal or accomplices,) extinguisheth the whole action, howbeit the pursuer insist only against the rest, and summoned not him with whom he hath agreed.

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1583.

IN an action of ejection, the pursuer's title being quarrelled as not competent to her after her husband's death; some of the Lords were of opinion, that the wife, having continued her possession after her husband's death certain years, she should have been orderly put therefrom, and not violently ejected, albeit she had no title; for, of the law, *ejicitur is qui possidet, sive naturaliter sive civiliter possideat*;—L. 1. ff. de Vi et Arm.;—*et glossa interpretatur, sive juste sive injuste possideat*. Others thought her in no better case than a liferenter; and it is *manifesti juris et quotidianæ praxis* that the fiar may put to his hand after the expiring of the liferent, without any warning. The Lords at last could not give her action without a title.

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1583.

The LAIRD of CRAIG *against* OGILVIE of POURIE.

POURIE Ogilvie being pursued by the Laird of Craig for delivery of the house of Craig; excepted, That the pursuer's father (to whom he was heir, at least had behaved himself as heir,) had set to him a tack of the mains and house of Craig; *et sic quem de evictione teneret actio, eundem ab agendo repellit exceptio*. He qualified *gestionem pro hærede*, by meddling with the heirship goods, as beds, boards, &c. Replied, That the excipient could not allege intromission with any heirship goods; because the pursuer's father died at the horn, and so all his goods pertained to the king and his treasurer. Duplied, That the horning could never purge *factum ejus qui pro hærede se gessit*, by intromitting with his goods, which were his the time of his decease. The most of the Lords found that the horning took away all intromission with heirship goods; in respect that he who deceaseth at the horn can have no heirship goods.

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1583.

MAXWELL *against* —————.

ONE Maxwell offering to improve a letter of tutory testamentar, made by the Laird of Stanky, *per testos insertos*, &c. the witnesses denied all that they knew any thing thereof; yet, in respect the body of the testament was written and