

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.

Page 88.

---

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.

Page 91.

---

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.

Page 148.

---

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

subscribed by the defunct himself, (as was perfectly known to every one,) the Lords assoilzied from the improbation; for it is the custom of gentlemen, &c. to make their latter wills in secret while they are in life, and call none thereto; and so may be called testaments *in procinctu, potius facta quam nuncupativa, et cum solennitatibus in jure requisitis.* Page 167.

---

1583.

GEORGE KNOLLS *against* RICHARD IRVING.

IN an action between George Knolls and Mr Richard Irving, an exception and duply being admitted to the defender's probation, the pursuer in the mean time raised a new summons *super eadem re, et eodem modo agendi variatis nonnullis circumstantiis*: Upon the which summons there was alleged no process, in respect of the state of the former process; yet it was found that the pursuer might renounce his instance, and pass from his libel and reply, *ante assignatum terminum*; nevertheless refunding to the defender his expenses, at the sight of the Lords. Page 197.

---

1583.

IN a reduction of a decret, the summons and executions being craved to be produced now *in secunda instantia*, and after fourteen years' space, because the pursuer was never summoned to the giving of the decret,—the Lords would not astrict either the defender or the clerk to produce them after so long a time; but thought the decret that bore the compearance of parties sufficient. Page 248.

---

1583.

BOTHWEL *against* The BISHOP of ORKNEY.

THE Bishop of Orkney having obtained a decret against an uncle of his own called Bothwel, this Bothwel got that same decret reduced thereafter upon this reason:—That he, being out of the country, in Almain, *animo remanendi*, where he had dwelt for the space of 15 years, it was not enough to summon him upon sixty days; but he should have been summoned so that the same might have come to his knowledge. Page 319.

---

1583. *January.* The HERITRIX of MURRAY *against* The TUTOR of SANQUHAR.

A TACK during will and pleasure lasteth no longer than the setter's lifetime, *quia voluntas morte extinguitur.* Page 325.