

proceeded from Matthew Hamilton of Milburn, unto whom the cedent, John Steil, disposed these lands, with reservation of his own liferent, and so Mr John, or his authors, could be in no better case than he to whom the first alienation was made. *Duplied*, That according to the common law, and daily practice, the defenders, and their authors, being so long in possession, by virtue of titles standing unreduced, without any reservation of liferent, they could not be compelled to enter in question of their rights and titles, but behoved *gaudere privilegio interdicti, uti possidetis*. To all this it was *answered*, That Mr John Sharp could never be heard to say against the reserved liferent of John Steil in Matthew Hamilton's infeftment, because he had used the said infeftments judicially, and had obtained decret and sentence by virtue thereof, in so far as the Lords had decerned a reversion given by John Hamilton of Shawton, (who was author to Matthew) to appertain to him, *tanquam jus superveniens et quod accreverat illi*, because he had bought the lands; and so having both judicially confessed the said liferent, and having allowed the infeftment whereinto it was reserved, and having also reported commodity by virtue thereof, he behoved *ex necessitate* to abide by the same, and consequently to fulfil the reservation of the liferent specified therein. THE LORDS, *in præsentia Regis*, admitted the exception qualified with the 38 years possession. *Nonnulli Dominorum contra*.

Spottiswood, (REMOVING.) p. 280.

No 5.

1610. February. BELMURE against TENANTS of Glengowar.

IN an action of ejection pursued by Sir _____ Belmure *contra* the Tenants of Glengowar, for ejecting them furth of the lands of Nether Glengowar, this exception was found relevant, that decret of removing was recovered by umquhile Mark, Earl of Lothian, against Sir _____ whereupon the Sheriff charged to put the Earl in possession, under pain of horning; the Sheriff ejected lawfully and orderly the said Sir _____; likeas, thereafter, my Lord Lothian put the tenants in possession; notwithstanding it was *answered*, That the exception was not relevant, without it were alleged, that Sir _____ was denounced rebel, and put to the horn upon the foresaid decret of removing, whilk the LORDS found nowise necessary to be alleged for the part of the tenants.

Kerse, MS. fol. 190.

No 6.

•* Haddington reports this case :

1610. February 10.—IN a pursuit of ejection, the LORDS admitted an exception, that the defender concurred with the Sheriff in putting a decret to execution, for removing this pursuer from the lands libelled, albeit the defender *alleged* not that this pursuer was put to the horn for not removing.

Haddington, MS. No 1802.