

9.9.24

Tit. 5.

Of wrongous Intromissions

Wrongous Intromission, is the attaining and withholding unjustly the Possession of Movables. Where a Tenant had sold Sheep pastured on his Masters ground by Warrant of a Sheriff, was found guilty of wrongous Intromission. Because neither Sheriff or Master, in virtue of his Hypothec, could bring back the Sheep except recently after Removal thereof; and the most ~~that~~ the Sheriff could do, was to arrest or secure them where they were. 4 Feb. 1676. Writ contra Cochburn of Ryelaw. When several Persons are guilty of a joint or promiscuous wrongous Intromission with a divisible Thing as Wines, they are not liable in solidum, but only for their equal share, which they must answer for, albeit the particular Quantity of every ones Intromission is not instructed. But if it is made appear that some Intromitter is more than others they will be liable pro rata, according to the Extent of their respective Intromissions 17 January 1660. Capt. Strachan contra Morison.

Because Movables pass from Hand to Hand by all the Titles of Alienation without Writ or Writheftes, the Possessor is presumed in Law to be the Proprietor, till the Presumption is taken off by clear Proof that they do not belong to him but to another, who in a Pursuit for Recovery must instruct that he is in Possession, and ceased not to possess them by Alienation, but by their being sold, or being hired, lent, spiked, stolen or robbed from him, or that a Person whom he represents was in Possession of them at his Death, or the like. Then may crave Restitution with the natural Fruits, at least in so far as the Possessor or qui solo desit possidere was profited thereby. Stair Lib. 4. Tit. 30. §. 1. Vintners may recover their Goods unjustly possessed by others, by the general Law of Locatio, Depositum, Commodatum, Trust &c. Stair Ind. §. 8.

It is a relevant Exception against wrongous Intromission, that albeit the Intromitter did not at first pass from the Pursuer by Way of Alienation, but in the Way and Manner libelled, yet he thereafter recovered Possession of them, since which Time the Defender acquired them from another who is presumed to have been the true Author, without Necessity upon the Defender to instruct a further Orogress. But then the Pursuer may insist against that Author and oblige him to prove his Author, and so proceed against Authors till at last he find out the wrongous Intromitter. Against whom, if chargeable with mala fides, he may recover all his Expences and Damages. Stair Ind. §. 10. A colourable Title secures a wrongous Intromitter from being liable for Fruits bona fide consumed. Stair Ind. §. 8.

Tit. 6.

Of Ejection and Intrusion

Ejection and Intrusion having so great an Affinity together, are here treated

of jointly. Ejection (called the Improperly, a Spuilzie of Lands and Possessions or of Fees and Herbage. Act. 14. Parl. 14. p. 2.) is as the Writ imports, the unlawful Entrance into Lands and Tenements, by violently dispossessing another or his Family, or Goods on the ground. An ejected Person for recovering Possession receives a Summons of Ejection (answering to ane Appize of of Disceissin in the English Law) and Brieve of Disceissin in our Old Law. Rich. Attach. cap. 53. n. 2. Whereof the Tenor follows: Our Will is and we charge you, that ye lawfully summon B. to appear &c. at the instance of A. for the Defender his wrongous violent and malicious coming by himself his Servants, Complices and others in his Name of his casting and sending haunting out Comyns, Roset, Substante or Ratihabitin upon the Day of &c. to the Land of &c. pertaining to the Pursuer, at first in his Disceissin by labouring the same, and pasturing his Goods thereupon, and by other Feeds of Disceissin. And then the Tenor wrongously violently and maliciously ejecting the Pursuer his Family, Tenants, Cottars, Goods and Goods, and sending himself in the possession of the same by himself and others, and his violently and maliciously continuing and maintaining the same in his possession in space of &c. That it is to say, to hear me see the Disceissin entered in process, in some servants and persons, and see in self committed a trespass of my said Land to repone the same and his Tenants, Cottars and Cottars, and a trespass of my said Land in the same State and Condition they were in the time of Disceissin, and to make payment of the natural Drifts since the Ejection, and the Pursuer to repopse, with the other Damages arising from the Ejection, and also to see and see himself recover to defalt in case he be troubled by the Pursuer hereon in any Time by what or otherwise than by the Force of Law conform to the Lawes and Ordinances of this our Realme &c. according to Justice &c. It hath been considered that Ejection is competent only to natural Proprietors possessing by themselves or their Tenants or Cottars and not to an Executor for the Ejection of his Tenants, unless these concur. Hope Mas. Writts of Ejection. Cunningham contra Widdow 26 Novemb. 1628. Bruce contra Bruce. Which is to be understood of wrongous and violent Drifts, which belong to the Tenant or natural Proprietor. But Nothing hinders the Executor to pursue for Recovery of Possession and ordinary Drifts that is to pursue the Ejector to remove without Warning and to pay the Rent 19 Feb. 1663. Scots contra S. Kaine 18 July 1660. Stool contra Kays observed as Dirleton. Stair Lib. 4. Tit. 9. §. 26. Lib. 4. Tit. 20. §. 4. Possession only being the Question, which is continued by apparent Representatives. It is no relevant Defence in a process for Ejection, that the Defender had from the Pursuer a Disposition of, or Obligation to possess the Land, not bearing a Warrant to enter summarily to the Possession. And tho the Disposition or Obligation did contain such a Warrant, it could not authorize a forcible Entry where Resistance is made for Spoliatus omnia restituendus, which is generally true in Spulzie of Hereditables as well as Movables. N. Senzie Observ. on Act. 14. Parl. 14. p. 2. and can only be taken off by the Dispositive Ratification of the violent Entry; whereas the Breve Frustra petis quod max. et restitutorius, is liable to many Exceptions. Stair Lib. 4. Tit. 28. §. 9.

Intrusion