

Intrusion, is one's Entry without any Shadow of Right or Title of Law to the Possession of Lands now for the Time as to the natural Possession, and civilly possessed by another. For it is no intrusion, to enter to Possession of Lands which the Proprietor had ceased to possess both corpore et animo, and so relying on the Statute Stat. Lib. 1. Tit. 9. §. 25. Lib. 4. Tit. 28. §. 1. The Party injured receives a Summons of Intrusion, differing only from that of Ejection, in that the former leaves the Intruder to have wrongfully entered to Possession of the Lands, and to claim the same by himself his accomplices and others &c. as in the Summons of Ejection. But in Process for Intrusion, the Lands entered to were not corporally but civilly possessed, it is a good Plea for the Defender, that he had an Obligation to possess, or voluntary Dispossession expressing or implying present Entry: That he could not defend himself upon Intrusion or Dispossession, as Person seeing these may be restricted in the Law and unless a Warrant for Summary Possession Spoken in the Arbitration Writ contra Scot Stat. Lib. 4. Tit. 28. §. 9.

So that Ejection and Intrusion differ, in that the former is attended with Violence, and cannot be justified by a Title to possess, whereas the latter is possible and excused by the Intruder's having a Right for attaining Possession. But in all other Things Ejection and Intrusion do agree. Thus they agree that a Squatter, in some sufficiently founded upon Possession as their title. When none can be put forth without their own Consent, or Fear of it. Nor can even a clandestine violent or vicious Possessor be dispossessed otherwise as in the public Peace Stat. Lib. 1. Tit. 9. §. 25. Lib. 4. Tit. 28. §. 2. But natural Possession by dwelling, labouring, or pasturing, at least by cultivating or improving Tenants at the Time of the Ejection, or recently before Intrusion, must be proved to sustain such Process. For Tenants converting their Master's Possession by putting their Reeds to another, will not import that other to be an Intruder or Squatter, which lies against Intruders. Stat. Lib. 1. Tit. 9. §. 25. Lib. 4. Tit. 28. §. 2. The natural Possessor only can claim the Defences both in terms or violent Drifts in a Process of Ejection (See Supra Page 954) or Intrusion: yet the Master of the ground may pursue Ejection (See Supra Page 954) or Intrusion 18 January 1631. Cant contra Horne. For dispossessing and removing the Ejector or Intruder and recovering the ordinary Drifts.

By Act of Parliament (Act 217. Part 14. f. 6.) no Defence can be made unless Caution be found for the violent Drifts at the first Diet of Lites contestation. That is, no Defence not instantly verified can be proposed unless Caution be found at the first Term assigned by the Act, not at propounding. And because some Time must be indulged for finding Caution, the Defence requires the finding of Caution before the Act of Lites contestation be taken. Stat. Lib. 4. Tit. 28. §. 8. Juratory Caution the ordinary received, where Persons cannot find other Caution, is not accepted in this Case so July 1630 Bennet contra Porteus M'kenzie Observe on Act 217. Part 14. §. 6. An Offer by the Defendant to prove that he relinquishes and restores the Ground within 24 Hours after Ejection or Intrusion is relevant to absolve from violent Drifts, but not to absolve from Damages, which the Pursuer may prove by his own Oath in Lites.

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Stat. Lib. 1. Tit. 9. §. 25. Action is altogether excluded by alleging and proving, that the Defendant entered to the Possession either Authore Ordine. By Authority of a competent Judge, or by Consent of the Pursuer who reported the Possession voluntarily removed which must be proved by Writ or Jura or Jura, or by evidence inferred from Matters of Fact offered to be instructed in Lites, as delivered by the Key Removers of the Stat. Lib. 1. Tit. 9. §. 27. Lib. 4. Tit. 28. §. 7.

Ejection and Intrusion prescribe in three Years. For Ejection and those of that Nature are appointed to be pursued within three Years after writing thereof, or if the Party injured be Minor within three Years after his full Age, otherwise never to be heard thereafter Act 8. Part 6. f. 10. Which time and others of that Nature, are extended to Intrusions made before 1. 10. 1610 L. against contra Annunimonth Stat. Lib. 1. Tit. 9. §. 25. Lib. 4. Tit. 28. §. 7. But this Prescription takes Effect only, as to the singular Privileges of ancient Drifts and Jura in Lites. For Possession is simply recovered by Possession, and the ordinary Reeds may be pursued after three Years at any Time without Warning so July 1626. 11. phadwick contra Lachlan 16. March 1627 Hay contra Her 28 June 1623. Maxwell contra Ferguson the a Drift of Recovering can be pursued only upon 40 Days Warning before Whitsunday.

Succeeding in the Vice, is a Kind of Intrusion, Intrusion which is.

Tit. 7.

Of Molestation.

The Law Effect of the Situation of Lands and Tenements confining upon another, obliges the Proprietors thereof to settle the Boundaries of their several Lands and Tenements if they are uncertain, or to keep to their respective Possessions, within the Bounds already marked out, if any such there be.

Molestation is the disturbing molesting and disquieting any Person or Persons of Land and his Tenants, or others claiming under him in the peace and peaceable Possession and Enjoyment of some Part and Portion thereof, by the Proprietor or Proprietors of adjacent Lands their Tenants Servants or others in their Name, killing or sowing it, or pasturing their Cattle upon it, as if it were their own.

By the Law a Controversy about the Boundaries of Lands is determined in a Trial, called actio finium regundorum. With us, for redressing Injury by Molestation, the Party injured if he desire only to maintain his Possession without bringing his Property in Question, raises a Summons of Molestation before the Court of Session, against the Disturber &c. concluding they should desist and cease from troubling and molesting him in the peaceable Possession of his Lands. Such a Summons runs thus: Our Will is and we charge you that you cease from troubling and molesting the Lands of &c. and &c. Tenants and Possessors thereof, to compare before the Lords of our Council and Session &c. to answer at the Instance of A. Heretofore, Disturber or Wadsetter of the Lands of &c. as being molested and troubled in the Possession of the said Lands by the said B. or by the Tenants and Possessors of the said B. his Lands of &c. at least who may be troubled or molested therein by Reason of the Troublesome