

Chap. 7.
Concerning Letters of Possession, and other Extraordinary
Legal Executorials.

Letters of possession (which in some to Entries and Writs of Entry
in England) are an Executorial over Law allowed to be raised upon
all Decrets of removing or others where by the obtainer is Decerned
to be put in possession, or Registered Contracts or obligations to perform
obedience to any which have the effect of Decrets.

In ordinary Cases the days of law, and the days upon which
Charge of holding is given, must expire, before Caption or process
for personal debt can be issued out. But there is no Reason for such
delay upon Decrets and Letters of possession, except Decrets of Con-
fiscation, and Letters of possession thereon, which imply a gift of im-
mediate Execution till the day in the Clerk of Registration papers
Stair lib. 4 Pt. 47 § 35.

These Letters of possession relate the Decrets they proceed
on and give warrant to dispossess the parties Decerned, their
Kins, heirs, Collaterals, and their goods and gear for the
from the Land or houses therein mentioned; and to enter the ob-
tainer of the Letters into the natural possession, or others by his
Warrant which is Inferred from their having the Letters, Stair
ibid. § 36.

The Form of Executing Letters of possession of a house or
Garden, is by opening the door and thrusting out the former possessor
or any belonging to him there, and letting in the obtainer of the Letters
or his orders. If the former possessor had goods therein, these or at
least three particulars thereof (or bribes, as they call them) must
be turned out by the Executer of the Letters; and the obtainer must
afterward cast out the rest at his pleasure. Stair ibid. Letters
of possession of ground, by turning off the ground at the Violent
Possessor's Call, at least three bribes thereof; and the rest may
be turned off by the obtainer of the Letters or his orders. If the
Party is understood to be dispossessed not with standing of
or other Moveables there that cannot be so removed Stair
ibid. A signed Copy of the Letters and Executions of possession

ought to be Delivered or offered to the party Decerned, to show his obe-
dience given thereto; lest he be Distressed over again at the hands for
the Rents as possessor Stair ibid.

When the ordinary Executorials of the Law of Session or other
Judges ordinary were Contemptuously, flighted and their Authority
refused, or frustrated; the privy Council of Scotland then in being,
used to issue forth Extraordinary Letters against the Disturbers, as
Letters for charging them in some Cases, viz. in Making Pious
Effectuals, to enter their personal and in some in name, under the
pain of Treason; Letters of fire and sword, for making letters of
possession effectual; Commissionating the Sheriff and others whom
he should name to reduce the Disturbers by force of arms, and
raising, and all other penalties. A Decret of the privy Council
ultimate legal &c. actions, Inferred the pain of Treason. This kind
of peace may, how that the privy Council is supposed, and such
Letters by Commission from the sovereign: Will not with the For-
tification of Treason, nor with the pain of imprisonment incurred by
Violent opposing or Resisting the Execution thereof.

So much shall suffice concerning the nature of the Letters of
by the Legal Divines of Scotland. Proceed to the next
Confiscated. How they may be affected by Debtors &c. How they may be
of Rights and Delinquents. Book 3.

Of Confiscation, and the
Rights of Law observed in a Confiscation, and making of Rights
and Duties on it.

Chap. 1
Of Confiscation.

Confiscation, is a Right which the King acquires to the Estate
or goods of his subject. It is so called from the Latine Confiscare, or
from the French Confisquer. Both which words are taken from Treasurers,
a hamper or Basinet, which among the Romans contained the
Publick Money of the Emperour, and Metonymically signifies his
treasure; as it doth with us the publick Exchequer. It is Improper
here to treat of the Bishop's privileges, or the several Causes
or grounds of Confiscation, these being part of the publick Law, which
principally concerns the State or Common Wealth. I shall therefore
restrict my self to the Consideration of things or rights, that
become Caducious and lost to private persons by the Title of
Confiscation.

The Difference betwixt Succession to the goods and Estates of per-
sons by Confiscation, and the Succession of heirs Entering without
Survivors