

1542. *March 2.*DOUGLAS *against* BOIG.

No. 3.

IN actiounis of spuilzie, the defendar sould not be heard alledgeand, be way of exceptioun, that the persewar spuilzeit the samin gudis and gear fra him befor the time of committing of the alledgit spuilzie done be him aganis the persewar; quia exceptio spoli prioris, super eadem re, non repellit actorem de spolio agentem. See APPENDIX.

*Fol. Dic. v. 2. p. 389. Balfour, No. 38. p. 475.*

1551. *March 27.*A. SPANIARD *against* TENANT, &c.

No. 4.

IN an action pursued by a Spaniard against Francis Tenant, and other burgesses of Edinburgh, the said Spaniard called the said Francis and his colleagues for wrongous intromitting with figs, and disposing thereupon, without title or right of him, or any having right to the said figs spuilzied from him, and being in his possession at the time of the spuilzie, and proper gear, and spuilzied from him by one called ———, a pirate on the sea, and brought into Scotland by the said ———, to the port of Bruntisland, and immediately intromitted with by the said Francis, and sold and disposed by them, the vice of theft and reiff not cleansed. It was excepted by the said Francis and his colleagues, That the said Spaniard had no action against them for the said figs, because he found none of them in his possession. It was answered by the said Spaniard, That the said Francis had received the said figs from the said ———, manifestly known pirate and reiffar on the sea, the vice not purged, and disposed upon them at his pleasure, and was made rich with the price thereof, and therefore the said Spaniard had good action to pursue the said Francis. Secondly, it was excepted by the said Francis, That he did no wrong in case he intromitted with the said figs, because the said ——— was a man of war, and passed forth at command of John Barton, who had a letter of marque upon the Portugueze, and a sea brief to the same effect, and the said figs were Portugueze goods, and offered him to prove the same. It was answered by the Spaniard, That this was directly contrary to his libel, who libelled the goods to appertain to him and friends in this realm, and spuilzied from them, and therefore should not be given to his proof. Thirdly, it was excepted by the said Francis, That he did no wrong in intromitting with the said figs, because he did it at command of authority, and had delivered the price thereof off his hand at the said command, long before intending the action against him for the same. It was answered by the Spaniard, That that authority could give no command which might be warrant to him to dispoise upon his proper gear, without the said gear had been declared to be just prize, or escheat of that authority, or Secret Council or Session, or some other judge having power thereto; which was not done in this case; but if it had been,

What title requisite to authorise intromission, where spuilzie is alleged?