

1750. November 28. THOMSON against WATSON.

THE point was here stated, How far a tack of a salt-pan for the term of 15 years, descends to heirs, though not expressed.

No 15.

It came in by a bill of suspension of a decree of the Sheriff of Haddington, decerning the heir to remove, at the instance of a purchaser; which the Ordinary on the bills having refused, the defender reclaimed.

And, upon advising the petition and answers, it having been observed, That the interlocutor of the Sheriff is agreeable to the only decisions upon record, which are two above a century ago; and that there being no decision on the point since, it may be considered as a new case; the LORDS, without declaring any opinion upon the point, 'Remitted to the Ordinary to pass the bill.'

Kilkerran, (TACK.) No 10. p. 538.

 S E C T. III.

What Right go against Heirs.

1582. January, MONRO against WISHART.

ANDREW MONRO in Newmoir, as cessioner and assignee, pursued a pupil called Wishart, for a spuilzie of certain goods, of cattle and corns, committed by the father of the said pupil.—It was answered to the summons, That the said pupil being but of the age of eight or nine years, could not be convened for the trespass or spuilzie committed by his father, except according to the common law, his father had been first pursued, and litiscontestation made into the cause, or that it had been libelled *quatenus ad illum pertinet*.—To this and to the law it was answered, That the said law ought to be understood *in criminali contentione*; and in the practick of Scotland and all civil nations, actions are transferred *in hæredes et universales successores active et passive*. THE LORDS found; by interlocutor, the said pupil and infant might be convened for the spuiliation of violence committed by his father; and thereafter they reserved the violent profits to their own modification.

Fol. Dic. v. 2. p. 74. Colvil, MS. p. 348.

No 16.

Although the heir of the committer of spuilzie cannot be pursued criminally, he may be convened for restitution.

1552. July. LD. KINFAWNS against LD. CRAIGIE.

ANENT the action pursued by the Laird of Kinfaawns against Drum Craigie, for the spuilzie of his place, it was alleged by the said Laird of C., That the

No 17.

Found in conformity with the above.

- No 17. said Laird of K. might not pursue him for the said spuilzie, because the said Ld. of Kinfauns had called for the said spuilzie, the plea dependent. It was *answered*, That as long as there was no sentence given upon another, he might call them he pleased for the said spuilzie. Which allegiance of the said Laird of Craigie was repelled. And albeit it was *alleged* by the said Laird of Craigie, That he was called for the spuilzie of certain goods alleged to be spuilzied from the Laird of Kinfauns by the Laird of Craigie his father, and were never intromitted with by the said young Laird, nor came never till his use; therefore he was not obliged to answer for the yearly profits of the said goods disposed by his father. It was *answered*, That the heir is obliged to answer for spuilzie, and the profits thereof, sicklike as the principal spuilzier. Which allegiance of the said Ld. of Craigie was repelled, in respect of the answer.

Maitland, MS.

* * Balfour reports the same case :

THE air of ony persoun, committer of ony spuilzie, may not be accusit criminally thairfor; bot he may be callit and persewit civille, siclike as the principal spuilziar, his predecessour, might have been callit, albeit nane of the saidis spuilziet gudis come to his use and profit, bot the samin, all and haill, were disponit be his predecessour.

Balfour, (SPUILZIE.) No 9. p. 467.

-
- No 18. 1610. May 30. HOG against BELL.

A WIFE being acted in the books of session of her parochin, to abstain from suspect company of a slanderous man, under a pecuniary pain; albeit her husband have consented to the act, she being therefore decerned by that session to have contravened that act, and being charged for the penalty, the same will not have execution against the executors of her defunct husband; because it is not thought reasonable that the husband's goods shall be evicted for the penalty of an injury done by his wife to himself.

Haddington, MS. v. 2. No 1872.

-
- No 19. 1630. February 10. MUIR against MUIR.

A REVERSION by decret of the LORDS extended against the heir, although the reversion bore no mention of heirs.

Fol. Dic. v. 2. p. 73. Auchinleck, MS. p. 207.