

No 18. Lords thought the execution by payment within the legal did take off the casualty, but demurred as to the relevancy of the trust and behoof, if that made the infestment accresce to the apparent heir, and allowed it to be further heard. See decision in Stair, 13th, 14th, and 28th July 1680, King's Advocate *contra* Yeaman, *voce* VASSAL, where intromission was found relevant to take off the casualty; though it was judged a stretch to find it fell by the appriser's death within the legal, till the expiration whereof, the vassal, against whom the apprising was led, continued still proprietor, and by his death only the ward and marriage opened; and the adjudication or apprising, till the ten years be run out, is no more but a *pignus pratorium*, or a security to the creditor for his debt; and the Crown has still the debtor to be its vassal during the legal, and ought not to claim the casualties by both the debtor's and the creditor's death, but must be content with one, though some have demanded both.

Fol. Dic. v. 1. p. 516. Fountainball, v. 2. p. 349.

S E C T. III.

Not competent to object against a Party's title, without a Legal Interest.—What understood to be a Legal Interest.

No 19.
An action of spuilzie was sustained, although, at the time of committing it, the party injured was at the horn, it being found *jus tertii* to the defenders to allege, that the action was competent only to the King and his donatar.

1554. June 16.

KINFAUNS *against* CRAIGIE.

ANENT the spuilzie pursued by the Laird of Kinfauns against the Laird of Craigie and others, it was *alleged* by the said Laird of Craigie, and his colleagues, that the said Laird of Kinfauns had no action to pursue the said spuilzie, by reason, that the said Laird was at the King's horn the time that the said spuilzie was committed, and so the action pertained to the King or his donatar. It was *replied* by the said Laird of Kinfauns, That howbeit he was at the horn, the Laird of Craigie's exception was no ways relevant; because he alleged *jus tertii*, and the whole goods libelled were in his possession the time of the said spoliation; and howbeit the King, or his donatar, might have meddled with the gear, yet no other party having no title thereto, nor command of ———, might meddle with the said Laird's gear, it being in his possession the time of the spuilzie; but he had good action to pursue the same after he was relaxed from the horn. In respect of the said reply, the Laird of Craigie's exception was repelled.

Then it was *alleged* by the said Laird of Craigie, That he did no wrong, howbeit such spuilzie had been committed, he being on the ground, as the said

Laird alleged in his libel, which was burning of houses, cutting and destroying of yards and trees, because the said Laird of Craigie was commanded by the King's letters, under great pains, to pass, concur, and assist the Sheriff, to take and apprehend the said Kinfauns, he being rebel for the time, and to asseige if he were therein; and so, if such burning and destroying was made, it was necessary, for the burning of the said house, and at the command of the authority, which exception was admitted, and given to Craigie's proof. It was *replied* by Kinfauns, That Craigie being his mortal enemy, purchased these letters himself, and with them came and asseiged the said Kinfauns; he knowing him to be his enemy mortal, durst not come forth, but leisomely he might defend himself from his enemy mortal; the other did wrong, in respect of his invasion, and spuilzie foresaid; which exception was repelled, and the exception foresaid admitted, notwithstanding the same reply, in respect Kinfauns was at the horn.

Fol. Dic. v. 1. p. 518. Maitland, MS. p. 119.

No 19.

1582. December. COUNTESS of ERROL *against* TENANTS.

THE Lady Esselmont, and some time Countess of Errol, as liferentrix, warned certain tenants of the lands called Redgeill to flit and remove *ab iisdem. rursum fuit per tenentes, se non debere remove*, at the instance of the said Lady, as liferentrix, because her liferent was given to her by her umquhile husband, the Earl of Errol, who was but a liferenter himself of the said lands; her son, the Earl of Errol that is present, being fiar, before the disposition made to the said Lady, and so, after his decease, her liferent behoved to expire, and so her right and title being expired, she had no place to warn. To which it was *answered*, That the allegiance made by the tenants against her title was *jus tertii*, and that it was not *extinctum juris agentis*, because *tertius ille*, who is the present Earl of Errol, was bound and obliged to warrant the said liferent to the Lady, as she had obtained decret of warrandice against him for the same, *et sic quoad illum quem de evictione tenet actio eundem ab agendo repellit exceptio*, and so the said allegiance proponed into the name of the said Earl, for the tenants should never be competent to save from removing, *quia non fuit extinctum juris agentis neque suspensum*.—THE LORDS, after long reasoning, for the most part pronounced and voted, and repelled the exception, and admitted the reply; and found, that the tenants had no place to allege this defence in the name of the Earl.

Fol. Dic. v. 1. p. 519. Colvil, MS. p. 345.

No 20.

A husband, who was only a liferenter himself, granted a liferent to his Lady. After the husband's death, she raised an action of removing against tenants. Found, that it was *jus tertii* to them to plead that the liferent was extinct.