

the summons by my Lord Sinclair, That the summons was not relevant to infer any such ejection, and that because he qualified only the stoppers of the hewers and leaders of the coal, and compelled them to hew and lead to his own behoof, whereby he could not infer the profit of the salt, but, at the most, the coals that were spuilzied, et non potuit agere interdicto, Unde vi, quia versatus rebus mobilibus ablatis aut spoliatis; and the inconvenience appeared to be great, either for stopping of coals or away-taking, to infer ejection and interest to salt, and profits of a salt-pan, in respect he libelled not continual action, but he did the same at such a time; for albeit had stopped him at the time, he might have put in his colliers, and wrought in some other part; and if super unico actu vel diversis actibus, there ought to be such a continual ejection and interest of profits, 1000 or 1200 merks, as was libelled, but only the profits of the thing that was taken away—that was coal. To all this it was answered, That there was no inconveniency, and that it might stand both together to libel ejection, by stopping and compelling of his colliers, and also spoliation of coals, in uno libello; for it might stand, that a man might be ejected forth of his ground and possession, and also his gear taken away off the same ground at the same time; and as to the interest and profits of salt, the same ought to be refunded, because quod tam in actione bonorum raptorum et unde vi, sic restitutio cum omni causa damni; for if the pursuer had not been stopped in hewing and leading of his panwood, he would have carried the same to the pan, and converted the same in making of salt, et de jure tenetur is, vim qui intulit, restituere omnes fructus, quos dejectos percipere potuit, si dejectus non fuisset, et non solum fructuum habendus est usus sed utilitatem, L. 4. § 41. D. De vi et vi armata, et Cod Unde vi L. 4. The Lords by interlocutor found the summons relevant, and admitted the same to probation; nevertheless, reserved the modification of the profits to themselves, because immense petebat actor, and that there was some necessary expense to be deducted, as was the expense of winning the coal, and leading and carrying the same, and also the making of the salt.

Calvil MS. p. 288.

1581. *April.* DRUMMOND *against* FORREST.

MARGARET DRUMMOND, the relict of umquhile Robert Forest in _____, pursued Robert Forrest younger, her good-brother, to hear and see a decret given against her for spoliation of certain trees forth of the wood and lands of _____, pertaining to the said Robert in property and heritage, and to her as conjunct fiar. The reason of the reduction was, that she was convicted for spuilzie, which would be no direct action, in respect the said Robert was not in natural and real possession, et non potuit agere interdicto, Unde vi; and also, the spoliation being proved, it was refered to his oath as to the quantity et juramento

No. 6.

No. 7.

A life-renter in possession cannot be pursued for spuilzie in cutting the wood, but only for wrongous intromission et *ad verum interesse actoris.*

- No. 7. in litem. It was alleged against the reason of the summons, Quod in hac actione non debuit agere actione, Unde vi, aut via spoliationis, sed tantummodo ad damnum et interesse, in respect the said Robert, proprietor, was not in real or actual possession, and she, as life-renter, was not warned to find caution, according to the act of Parliament. The Lords admitted the reason of the summons, and reduced the Sheriff's decret, nam de jure communi hæc actio arborum furtim cæsarum est penalis, et condemnatio ejus vel in duplum est, vel facienda est estimatio quanti damni intersit non lædi, L. 7. et 8. D. Arborum furtim cæsarum; et non juramentum in litem.

Fol. Dic. v. 2. p. 382. Colvil MS. p. 297.

1594. December. L. of MERTOUN against TOWN of LAUDER.

No. 8.

THE Laird of Mertoun, Halyburton, pursued the Bailies of Lauder for spuilzie of certain sacks of victual, and certain sums of money, extending to 500 or 600 marks, in the sacks' mouths. It was alleged by the defenders, not granting the quantity, that if any intromission they had with the said victual, it was by virtue of many acts of Parliament made against forestallers, and the particular acts of the burgh made conform thereto, in so far as this victual having presented the market, it was not sold that day, but was taken into a house by certain persons, who thereafter bought the same, who were common forestallers, and in prejudice of the market and hail burgh, had bought it betwixt the market days, to sell it dearer to the lieges of the burgh; for punishment of the which forestallers, they had intromitted with the said victual, and dispoed one part to the poor, and another part to the common good, conform to the acts of Parliament and consuetude of the hail burghs. The Lords admitted the said exception to probation.

Haddington MS. No. 457.

1628. July 8. ALISON against TRAIL.

No. 9.

IN an action of spuilzie, the defender being convened for spuilzie of certain of the pursuer's goods, which were libelled to be in the defender's house, the Lords found no action of spuilzie could be sustained for the goods which were libelled to be in the defender's own house, albeit the same pertained to the pursuer; but that the pursuer might pursue for restoring and delivery of the goods to her.

Alt. Belshes.

Fol. Dic. v. 2. p. 388. Durie, p. 384.