

- 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.*

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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 disposed 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.*

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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.*