

No. 70.

produced a commission given by advice of the Secret Council, to the same effect and purpose, et de jure quæ principi placent legis habet vigorem; et Lucius D. De empti: Si res vendita ablata sit autoritate principis, venditori non nocet, et quod quis mandato judicis facit, dolo facere non videtur, cum habeat necessitatem parere de regni jure; and certain practicks and acts of Parliament were produced, to make for them that had intronitted with other folk's places and gear, by virtue of commission. Against all this it was alleged, That all the writings and commissions were impetrated tacita veritate et ad suggestionem partis; and the meaning of the law anent parendi necessitatem et quæ debentur principi et judici in rebus solum civibus, nam privatis personis licitum est resistere, si contra juris formam aliquid fiat a judice aut a principe aut a fisco, ut in L. 5. et 7. Cod De jure fisci; and as to practicks, there were practicks in recent memory contrary to the same. The Lords repelled the exception, and admitted the libel to probation, notwithstanding of the same.

In the same cause, it was alleged by the Earl, That the said Lady had intronitted again with a good part of the gear that was alleged to be spuilzied, and so had purged the hail spuilzie. The Lords admitted the exception to purge the spulzie pro tanto; and some of the Lords were of opinion, according to the ancient practice, that the allegiance was not relevant, except the defender would have qualified the same to have been done incontinenter and infra triduum.

Fol. Dic. v. 2. p. 392. Colvil MS. p. 406.

1608. December 10.

GLEN against SETOUN.

No. 71.

It was no excuse to a son committing a spuilzie, that he had the orders of his father.

Mr. Robert Glen pursued Setoun, son to umquhile John Setoun of Pittredie, for wrongous intronission with the teind-sheaves of the said umquhile John's lands, pertaining in tack to the said Mr. Robert in anno 1597, 1598, &c. It was alleged by the defender, That no action should be given against him, because if any meddling he had with these corns, it was as a servant to his father, he being then a minor, of 15 years of age, *in domo et potestate patris*, and at his command. It was replied, That the pursuer having served inhibition, this defender, and all others, were *in mala fide* to have meddled with any of these corns unteinded. The matter being reasoned amongst the Lords, some alleged, for the defender, that a man's bairns and servants being commanded, in harvest, to lead the master's corns, sown by himself, albeit they be both stock and teind, to his barn-yard, without any farther intronission to their own behoof, they were *in bona fide*, and *habebant parendi necessitatem*, and could not be in danger of law as if they had meddled with any other man's corns, growing upon any other ground; and if it were found otherwise, household servants and bairns might be wraiked and snared in great inconveniencies. It was answered, That the inhibition put *omnes mortales in mala fide*, and that wrong had no warrant; so that whoever was at a spuilzie, whether son or servant, might be pursued *suher proprio facto*; and if it were found

otherwise, it would give great boldness to servants and men's bairns to do wrong. The Lords repelled the exception, and declared they would take good attendance to the probation, and reservè the modification to themselves.

No. 71.

Fol. Dic. v. 2. p. 392. Haddington MS. No. 1502.

1610. May 24. KILMURE *against* WILLIAMSON.

In an action of ejection and spuilzie pursued by Bewis Kilmure against John Williamson, in Nether Glengour, for spoliation of certain stacks and rucks of hay, mown by the said Sir Bewis, and stacked upon the said lands of Glengour, this exception was found relevant, That the decret of removing being obtained against the pursuer, and he being removed by the Sheriff, it was lawful to the defender, as servant to the ——— of Lothian, his master, to meddle with the hay; notwithstanding it was answered, That the hay was separated from the ground by Sir Bewis.

No. 72.
The orders of
a master
found to ex-
cuse.

(The like betwixt the Laird of Lugton and Wilson, in the Potter-row; the Laird of Falhounside and Sinclair of Denston; and Joseph Marjoribanks and Michael Phinlaw against the Lady Melderstaines.)

Item, The same day, and in the same cause, it was found, That Kilmure ought not to have action of spuilzie for certain picks and mattocks intromitted with by one of the defenders, who was an ordinary workman in the silver-mine, in respect he was *in bona fide* to meddle with his own work-looms, which were delivered to him by his master before; and the most he could have against him, was only restitution of the work-looms.

Kerse MS. fol. 197.

1611. February 1. GUTHRIE *against* LINDSAY.

In an action of spuilzie of two mares, pursued by Patrick Guthrie of ——— against David Lindsay of ———, the Lords found an exception relevant upon a decret absolvitor obtained by Sir Walter Lindsay *contra* the said Patrick Guthrie, before the Secret Council, whereby he was assoilzied from all wrong in taking of the said mares, relevant to elide the said action of spuilzie.

No. 73.

Kerse MS. fol. 197.

1614. June 29. ELLIOT *against* LORD BALCLEUGH.

In an action of spuilzie of corns, pursued by John Elliot of Barnmouth against my Lord Balcleugh, the Lords found an action relevant founded upon a decret of removing, and lawful entry, conform thereto; and notwithstanding it was

No. 74.