

SECT. XVII.

Wrongous Intromitters.—Delinquents.

1609. *December 2.* ———— *against* LD. COWGRANE.

A MAN in the Lenox pursued Demerstoun of Cowgrane, and certain others, for the spoliation, or way-taking, resetting, withholding, and detaining certain of his nolt. Litiscontestation being made, he proved the away-taking furth of his byre of four nolt by Cowgrane, and that they were taken to the house of another Demerstoun that night, and kept all that night; which the Lords found to be a probation of the spuilzie against the said persons, in respect of their reset. Thereafter, it being alleged, That Cowgrane was dead since the act of litiscontestation, the Lords found, That no sentence could be given against him, because the depositions of the witnesses contained probation against Cowgrane. The Lords found, That the act of litiscontestation made the quantity to divide in equal portions against all the defenders against whom any thing was proved; and therefore they decerned that part which answered to Cowgrane's part, and decerned for the rest against the remanent defenders.

Fal. Dic. v. 2. p. 385. Haddington MS. No. 1672.

1628. *February 13.* LADY DUMFERMLINE *against* The EARL, her SON.

IN a pursuit by the Lady Dumfermline, against the Earl her son, for payment of the terce of the feu-duties of the lands disposed in feu to the feuers thereof, and which feu-duties, by the feuers' infestments, were due to her umquhile husband, by his right of the same lands, he being superior to them, and they being his feuers, and proprietors of the lands; to the third of the which feu-duty she acclaimed right by her service, as Lady-tercer, served to the third of all the lands where-in her husband died infest; and he being infest in these lands, albeit the property pertained to the feuers, yet her husband's infestment, although it extended not to the property of the lands, it was valid for the feu-mails, and consequently, albeit she had no right to the terce of the lands, whereof her husband was not proprietor, yet she acclaimed right to the third, and terce of the said feu-duties, to the which she restricted her service and pursuit. The Lords found, that the Lady-tercer had no right to claim any right of terce out of any feu-duties, whereof her husband had right the time of his decease, seeing he being denuded of the property, and re-

No. 105.

Litiscontestation being made against several persons in a spuilzie, and the intromission of all of them being proved, the quantity was found to divide among them, and to have execution against each *prorata*; but one of them having died after litiscontestation, the rest were found liable also for his proportion.

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The Lords sustained process both against the heir who was convened for the terce uplifted by him, and also against the tenants who were convened for payment of it, and that *in solidum*.