

committed spuilzie, he was in dolo aut saltem in lata culpa quæ dolo equiparatur et contra talem juratur in litem L. 5. et 11 D. De in litem juran C. Ibid. And it was also lately practised betwixt] the Commendator of Cambuskenneth, and David Balfour, that having proved spoliation and ejection forth of a barn, got the contents contained in a bonnet case of gold, silver, and precious jewels, to his oath, de quo vide No. 20. p. 9369. *voce* OATH; for how could any man prove the possession and contents of his own evidents otherwise than by his oath, considering that men keep their evidents most secretly, et non patet eorum aspectus cuilibet de domo et familia. The Lords *una voce* found by interlocutor *quod rarum est*, that Balmains should have the contents of his evidents to his oath, and thereafter to pursue for the interest.

No. 45.

Fol. Dic. v. 2. p. 391. Colvil MS. p. 378.

1611. *January.* GORDON *against* LORD FORBES.

No. 46.

In an action of spuilzie pursued by Gordon of Abergeldie, as assignee to Patrick Mortimer against Arthur Lord Forbes, the Lords assoilzied from the profits of the goods spuilzied, in respect they were intromitted with *bona fide*, the horning standing and not reduced, albeit there was no declarator recovered upon the horning.

Kerse MS. Fol. 197.

1611. *January 10.* BAILIE *against* LORD TORPICHEN.

No. 47.

In an action of spuilzie pursued by John Bailie of Breadshaw against my Lord Torpichen, the Lords sustained an exception of pointing to elide the spuilzie, notwithstanding it was alleged that the spuilzie was committed upon the 12th of January, 1604, before the which day the decret whereupon the pointing was used was suspended, and the Bailies discharged; and that in respect the pointing was upon the 9th of January of before, which the Lords preferred to the libel being only founded upon probation of witnesses.

The like case before, James Stewart of _____ and William Anderson.

Kerse MS. Fol. 197.

1543. *February 12.* BASTARD'S EXECUTORS *against* DOUGLAS.

The Lords decerned a man in a spuilzie of a deceased bastard's goods, who was rehabilitated by the King, although he had a *titulus coloratus*, viz. a gift of bastardy from his Majesty, with a letter from him to the Sheriff to possess him.

No. 48.

Fol. Dic. v. 2. p. 391. Sinclair.

* * This case is No. 40. p. 14744.