

put *in deposito*, or such like; and that for two years possession the possessor should be counted proprietor and owner: But in this the Lords reserved to the pursuer his action against the person who received his cow, for restitution of the same; wherein the Lords found that he was not, neither should be prejudged, by admitting of the foresaid exception; and that the like ought to be done when the like cases occurred.

No. 49.

Act. Hope. Alt. Cuninghame. Clerk, Hay.

Durie. p. 163.

1628. February 14. LAIRD OF MUDIALL *against* FRISSAL of _____.

No. 50.

THE pursuer of spuilzie of goods alleges a month's possession in the summons, but libels no other right to the goods. The defender alleges he had right to the goods wherewith he intromitted from the person to whom the goods pertained, and who had them in possession a year before. The Lords ordained the pursuer to condescend upon his right to his property of the goods.

Auchinleck MS. p. 216.

1628. March 4. SCOT *against* BANKS.

No. 51.

THE messenger being convened in a spuilzie as one of the spuilziers, the Lords found the allegiance proponed for him relevant to liberate him, both from the spuilzie and wrongous intromission, viz. That he pointed by virtue of the Lords' letter, directed for pointing the pursuer's goods for the debts therein contained, although the decret whereupon pointing was raised was not given against the pursuer, for it was not his fault that the letters were wrong directed; and as he had no opportunity to see the decret, so it was not his part to call for it, or search the same.

Fol. Dic. v. 2. p. 391. Durie.

* * This case is No. 220. 6015. *voce* HUSBAND AND WIFE.

1635. March 14. M'KAY *against* MENZIES.

No. 52.

A PARTY having taken a horse coming home with meal from another mill than his own, to which the owner of the horse was thirled, and in an action of spuilzie defending himself with the Book of Majesty, and the custom of that country, viz. Athole, the Lords sustained the exception to liberate from spuilzie, but not from restitution of the horse.

Fol. Dic. v. 2. p. 391. Durie.

* * This case is No. 5. p. 1815. *voce* BREVI MANU.