

raptorum in uno lybello; for it might stand, that all men must be ejected out of his ground and portion, and also his gear taken away off the same ground at the same time; and as to the interests and profits of salt, the same might be refunded, because quod tam in actione bonorum raptorum et unde vi sit restitut. cum omni causa damni; for if the pursuer had not been stopped in hewing and leading of his pan-wood, he would have carried the same to the pan, and converted the same in making salt, et de jure tenetur is qui vim intulit restituere omnes fructus quos ejectos non percepit. The Lords by interlocutor found the summons relevant, and admitted the same to probation; nevertheless, they reserved the modification of the profits to themselves, because immensas petebat actor, and that there were some expenses necessary to be deducted, as were the expenses of winning of coal, leading, and carrying of the same.

No. 5.

*Colvil MS. p. 79. & 80. (Second Copy.)*

1582. July. DAMITSTON against MAGISTRATES OF LINLITHGOW.

There was one David Damitston that had obtained a decree against certain of the Baillies of the town of Linlithgow, and certain others, for the demolishing and downcasting of a new mill pertaining to the said David, therefore he pursued the said persons for the violent profits. It was answered, That he could have no action to pursue for the violent profits into his name, because he was not occupier. To this was answered, That the action of the violence was ay accessory to the principal debt et accessorium sequitur naturam principalis. The Lords found by interlocutor, That he could have no action to pursue for the violent profits, because he was not occupier himself, but that the action was only competent to him that really occupied and was in possession.

No. 6.

Action for violent profits was found competent, only to him who was in actual possession.

*Colvil MS. p. 339.*

1595. June 2. ROSS against LADY FOWLIS.

Ross, assignee constituted by the Lady Fowlis to a warning and action of removing pursued by her against certain tenants of her conjunct-fee lands, having made litiscontestation, and used some probation thereintill, it was alleged by the defenders, that they could not be decerned to remove at this pursuer's instance, and to suffer him to enter and possess, because his right was an assignation granted by a life-renter, who being deceased, there was an emergent exception competent to them, in respect of the Laird of Fowlis' heritable infestment, which was convalenced by the death of the life-renter, and he being their master, they could not be decerned to remove. The Lords found, That the pursuer's action for removing from the ground was taken away by the decease of the lady life-renter, his

No. 7.

A life-renter assigned an action of removing, and died after litiscontestation. An emergent exception thus arose against removing, but violent profits were found due.

- No. 7. cedent ; but they decerned, That this assignee should also have good action against the persons warned for the violent profits from the lands, albeit from the time of the warning to the time of the cedent's decease, as if he had obtained decree of removing.

*Haddington MS. v. 1. No. 544.*

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1610. *June.* LAIRD of BALNAGOWN *against* MONRO.

No. 8.

In an action of violent profits after a decree of removing pursued by the Laird of Balnagown against Hector Monro of ———, the Lords would not suffer the defender to propone his exception peremptory against a part of the profits of the lands, because albeit in a spuilzie that may be an exception for a part of the goods, yet the like cannot be either in an ejection, or otherwise in an action of violent profits.

*Kerse MS. p. 241.*

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1611. *November 16.* WEDDELL *against* BUCHAN.

No. 9.

In an action of violent profits pursued by Gilbert Weddell and Seton, his wife, in Leith, against Buchan, for not removing from a tenement in Leith, the Lords sustained the action for double-mail, albeit Leith be not a burgh regal, but a burgh of barony, in respect of the validity and number of the houses and inhabitants, greater than many burghs regal.

*Haddington MS. No. 2299.*

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1706. *February 5.*

ANDREW KER, Brewer in Edinburgh, *against* ALEXANDER DUNBAR of Thundertoun, and other late Tacksmen of the Excise.

No. 10.

In an action of spuilzie of a caldron and still-pot, the spilt browst and expense of the pursuit allowed in name of damages, but not the rent of the brewery as laid waste, and the

In an action of spuilzie at the instance of Andrew Ker against the late tacksmen of the Excise, for their unwarrantable pointing of a copper caldron and still-pot, the Lords found the pointing unwarrantable, and allowed the pursuer to give in a condescendence of damages and expenses sustained thereby. But a condescendence being made, they sustained the same only as to the goods found to be unwarrantably pointed, viz. The copper caldron and still-pot, spilt browst, and the expense of the pursuit ; and not for the rent of the brewery laid waste by the illegal pointing ; nor for the loss of brewing looms, that fell down through not using thereof ; nor for the malt spilt through want of the caldron to brew it in ; nor for the profit the pursuer might have had by his trade during the space fore-