

* * * Gosford also reports this case :

No 268.

IN an action of spuilzie pursued at the instance of the Master of Rae against Dunbeath, Sandsyde, and others, bearing for violent profits; and it being *urged*, That the pursuer should have *juramentum in litem*; it was *alleged* for the defenders, That they could only be liable for wrongous intromission, to be proved either by witnesses or the defenders oath; because the said action of spuilzie and violence was prescribed by act of Parliament of King James VI. not being pursued within three years after the alleged spuilzie. It was *replied*, That the said action was wakened within the years of the prescription, in so far as there was a criminal pursuit intended against the defenders for these spuilzies before the Justice; and albeit it took no effect, becaues of a demission obtained by the defenders, and produced in judgment, yet it ought to be sustained as a legal interruption of the prescription, seeing the act of Parliament is founded upon that same principle of the common law, *Injuria seu verbalis seu realis ad certum tempus suppressa dissimulatione præsumitur sopita*; which cannot be said here, the resentment and complaint being made so public within a short time after committing of the violence, and in which criminal action the Justices might have given sufficient reparation; and accordingly it is statute in the 9th act of the 2d Parliament King Charles II. It was *duplied*, That it is clear, by the act of King James VI., that all spuilzies and depredations not being pursued within three years prescribe; and the late act of Parliament was made after the alleged spuilzie libelled. THE LORDS did restrict the pursuit to wrongous intromission, and denied to give the pursuer *juramentum in litem*, reserving to themselves to modify the process after probation, upon that reason, that these criminal pursuits are only *ad vindictam publicam*, nor probation led either for worth or damage.

Gosford, MS. No 848. p. 537.

1715. February 1.

Sir ARCHIBALD SINCLAIR and his Lady *against* the Marquis of ANNANDALE and Others.

THE Marquis of Annandale having two expired apprisings and a decreet of preference and mails and duties against the Lady Stapleton and the Tenants; yet the Lady continuing in the natural possession till her death, and having in her lifetime disponed her right of fee to Dame Margaret Irvine her neice, the Marquis's chamberlain, after her death, came, and so far took possession in name of the Marquis that he set a new tack to the tenant; notwithstanding whereof, Irvine of Stank, Sir Archibald's factor, came and took possession of the house, whereupon he and others who had concurred, being convened in a

No 269.

A summary complaint being insisted in before the Lords, upon a fact of intrusion, as in contempt of their authority, found not to interrupt the tri.

No 269.
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same fact.

riot by the chamberlain before the Stewart-depute of Annandale, they procured an advocation, upon which that process was sisted. But the said Stank, his wife, and others, having stopped the said tenant in his labouring, the chamberlain raises a new process of riot before the said Stewart; wherein, after probation led, and none of the defenders compearing, except Stank's wife, she was imprisoned; and the chamberlain brought other ploughs, and laboured the ground; upon which Sir Archibald Sinclair and his Lady gave in a complaint to the Lords, for breach of authority after an expedite advocation. To which there were also *answers* given in, That there was no procedure in the particular cause advocated, which only concerned the dwellinghouse; and that as to other matters, parties were not obliged to answer summarily. But the pursuers thereafter, and when 3 years were expired, raised a new process of intrusion, violence, and oppression, &c. Where

It was *answered* for the defenders, *imo*, Prescription, the action not being intended within the 3 years.

Replied for the pursuers, That the prescription was interrupted by the complaint given in to the Lords, whereupon answers were superseded.

Duplied for the defenders, That a summary petition is nowadays equivalent to a process of intrusion, which necessarily must be intended within 3 years; for nobody was obliged to answer the complaint, which appears by the pursuers raising a new process, but without the time.

Triplid for the pursuers, That by the complaints and answers thereto, the defenders were sisted *in judicio* as such; and the Lords ordaining the petitions to be seen and answered, did abundantly supply the want of a summons, which is only designed for certiorating parties concerned; so that the whole matter being by the complaints brought under view, did sufficiently testify the pursuers intention to prosecute their right, and was a more effectual interruption than a summons only execute.

THE LORDS found, That the action of intrusion libelled is prescribed as to the violent profits not being intended within the 3 years, notwithstanding of the complaints exhibited and insited in against the defenders shortly after the facts libelled.

Act. Sir Wal. Pringle.

Alt. Sc.

Clerk, Robertson.

Fol. Dic. v. 2. p. 119. Bruce, v. 1. No 47. p. 60.