

S E C T. VI.

Defences.

1547. June 6. & 16. JOHN CULTAR *against* JOHN LOGAN.

No 122.

IN actiounis of spuilzie or ejectioun, gif the defendar use and propone ane peremptour exceptioun, that he intromettit with the landis, gudis and geir alledgit spuilzeit be him, be ane just richt and titill, and it happin the samin exceptioun to be repellit be the Judge, the avail and quantitie of the spuilzie may be referrit to the persewar's aith; because the defendar, be proponing of that exceptioun, grantit the committing of the spuilzie and ejectioun.

Fol. Dic. v. 2. p. 187. Balfour, (OF SPUIZIE AND EJECTIOUN.) No 30. p. 473.

* * * See No 2. p. 5407. *voce* HEREZELD.

1554. April 28. STEWART *against* ———

No 123.

ANENT the action pursued by J. Stewart against ——— for violent ejection of him forth of certain lands, he having tacks to run, and being in possession, and produced his tack for his title, and certain witnesses to prove his possession. The other party *excepted* peremptorily, and took in hand to improve the tack, which was the said James's title. The said James *alleged*, That he was not obliged to produce any witnesses in the matter, in respect of the peremptory exception proponed by his party of improbation, and protested for a condemnator, in case the party improved not, which was admitted.

Fol. Dic. v. 2. p. 188. Maitland, MS. p. 119.

1573. March 20. Lord OLIPHANT *against* OLIPHANT.

No 124.

THE Lord Oliphant, assignee to umquhile N. Oliphant of Kellie, pursued Andrew and Peter Oliphants, heirs of tailzie to the said Laird of Kellie, for to give him a reversion, which the said Andrew obliged him to do to the said Laird of Kellie, his heirs and assignees, for redemption of certain lands analized by the said Laird to the said Andrew. For verification of the said promise, the said Lord produced an instrument. The defenders offered them to unprove the said instrument, *omni modo quo de jure*, as false and feigned, but, at

Found, that one proponing improbation had passed from all other defences.