

1614. *December 22.* CRAWFURD *against* MINISTER OF FAILL.

No. 24.

IN an action pursued by John Crawford, as assignee to an action of spuilzie for the teinds of Gaston and Symenton by the Minister of Faill, the Lords found the exception competent against the Minister upon a decret-arbitral, whereby he was obliged to set tack to the Laird of Craigie Wallace, relevant against the assignee, because he was not tacksman nor user of the inhibitions, but the minister; and they being *in bona fide* against him, they could not be spuilziers therefore.

*Kerse MS. Fol. 198.*

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SECT. IV.

SPOLIATUS ANTE OMNIA RESTITUENDUS.

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1541. *February 11.* SOMERVILLE *against* HAMILTON.

No. 25.

IN the cause of H. Somerville against N. Hamilton, anent spuilzieing of him of the fruits of his parish clerkship, the actor's witnesses for proving of the spuilzie produced, proved him spuilzied two years or more before that time of the spuilzie, which time was libelled, and so proved not *libellatur tempus spolii*. Nevertheless the Lords decerned sentence condemnator *contra reos* for the years libelled; and the reason was, because of the practise "spolians semel censetur et semper spoliare donec spoliatus semel sit restitutus;" and in the same cause the Lords decerned, That "titulus obtentatus domino vel habente auctoritatem disponendi de rebus per spoliatores post spolium semel commissum," may not save *spoliatores a spolio* from the date of his title *in posterum*, because "opportebat spoliatum semel restitui ante quam ipse spoliator possit justa quavis ratione possidere rem spoliatam;" and so it was a practise before *in causa cujusdam contra dominum de Crawford*, that spuilzied peats from certain poor men, and put them violently out of possession of a moss and fuel casting therein, and thereafter obtained infestment of the King, but the title saved not from the spuilzie, and was condemned to restore the actors to their possession foresaid; also the said Hamilton was condemned to restore *actorem* Somervell to the fruits of his clerkship.

A just title acquired after the spuilzie does not liberate the defender *retro* from the date of his title.

*Fol. Dic. v. 2. p. 380. Sinclair MS. p. 11.*