

1582. *January.*HOME *against* LAIRD of BASS.

ALEXANDER HOME of North Berwick pursued the Laird of Bass for the spoliation of certain teind sheaves. The libel being admitted to probation, and the spuilzie being proved, the said Alexander desired, that notwithstanding, conform to the law and practice, he might have the quantity to pass oath and conscience, yet because he was not resolved to give his oath thereupon of the thing that was uncertain to him, he desired to have the quantity proved by witnesses. It was *alleged* upon the other part, That he ought not to have the same to be proved by witnesses, but behoved of necessity to give his oath thereupon, et fuit juramentum necessarium conform quotidiano ordini, and practice used in all such actions. To which was *answered*, That it was juramentum in litem et introductum fuit in favorem partis et spoliati ut in L. 9. Cod. Unde vi; et unicunque licet juri pro se et in ejus favorem introducto renunciare. THE LORDS pronounced by interlocutor, and would not receive probation by witnesses, but ordained the party to give his oath.

Fol. Dic. v. 2. p. 9. Colvil, MS. p. 347.

1628. *March 8.*BROWN *against* MURRAY.

IN a spuilzie betwixt Brown and Murray, there being sundry particulars libelled of diverse natures, contained in the summons libelled to be spuilzied, as insight and plenishing of an house and goods, viz. oxen and horse off the field, and corns out of the barns; and the witnesses having proved spuilziation of some corns out of the barns and no further; the LORDS found that the pursuer's oath should be taken, and that he might swear upon all the particulars of the summons, albeit they were of diverse natures, and that no particular was proved but only one; and the pursuer having sworn upon the spuilzie of the insight of the house, which was not proved; the LORDS allowed of the oath deponed thereon, and found he might so depone upon all, where any one thing within the summons was proved; but the LORDS taxed the prices deponed on by the pursuer in his oath, no party compearing here for the defender.

Clerk, *Scot.*

Fol. Dic. v. 2. p. 10. Durie, p. 356.

* * Spottiswood reports this case:

THERE was an action of spuilzie and ejection pursued by Brown against Charles Murray, wherein ejection was proved, and the spuilzieing and taking away of twelve bolls of oats only, and not of oxen and household plenishing

No 10.

Notwithstanding the rule that unicunque licet favori pro se introducto renunciare, yet a spoliation being proved, the Lords refused to allow the quantities to be proved by witnesses, but ordained the party to give his oath *in litem.*

No 11.

Found in conformity with Jardine against Melgum, No 8. p. 9359.

- No 11. which was libelled; yet the pursuer got *juramentum in litem* upon all that he had libelled, and having deponed upon plenishing and plough-graith, albeit it was *heterogeneum* from the oats that was proved, it was sustained; but his oath was taxed to a lesser quantity than he had sworn.

Spottiswood, (EJECTION.) p. 94.

- No 12. 1667. *January 3.* ———— *against BRAND.*

A PERSON having, without due order of law, intromitted with a pack of goods left in his hands by his debtor as a security for the debt, the debtor was allowed his oath *in litem*, though it was pleaded for the creditor, that he had caused four of his neighbours inventory and price the ware.

Fol. Dic. v. 2. p. 10. Stair.

* * This case is No 8. p. 1817, *voce* BREVI MANU.

- No 13. 1740. *January 18.* CAMPBELL *against* MAN.

THE practice has long been in spuilzies for the Lords to modify after the pursuer had given his oath *in litem*; but the method formerly was to ordain a condescendence of the damages to be given in before taking the oath *in litem*, which the Lords modified as they saw cause, and thereafter took the pursuer's oath *in litem*, lest they should have modified too much; for the oath might restrict, but could not extend the modification.

And in respect of the said former practice, such was the method taken in this case.

Fol. Dic. v. 4. p. 21. Kilkerran, (OATH.) No 1. p. 359.

- No 14. 1795. *December 4.* A. *against* B.

IN a spuilzie the Lords allowed both an oath *in litem* and in supplement to ascertain the amount of the sum lost. See APPENDIX.

Fol. Dic. v. 4. p. 21.