

- 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.

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.

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.

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-

said; albeit he alleged that all these damages resulted as naturally from the unlawful pointing, as in assythment of the mutilation of a man's hand, the loss of his trade thereby is modified: Because the pursuer need not suffer his malt to corrupt for not brewing it in due time, nor his looms to fall in staves through want of use, but might have otherwise disposed on both, since he had no caldron to brew; and the foresaid extrinsic damages, with those for the loss of the pursuer's trade, and the want of rent for his brewery, have no contingency with mutilation; for a tradesman's loss through the want of his hand is irrecoverable, whereas the pointing of a caldron might have been repaired, by putting another in the room of it. And damage in the pursuer's employment could no more be required upon that head than a tailor could seek damages for the loss of his trade through the illegal taking away of his thimble and scissars.

No. 10.
 loss of the
 pursuer's
 trade by the
 spuilzie, nor
 yet the price
 of brewing
 utensils that
 fell down for
 want of use,
 or of malt
 spoiled for
 want of the
 caldron to
 brew in.

Eorbes, p. 90.

See APPENDIX.