

R E S I N T E R A L I O S.

S E C T. I.

Proof.

1541. July 13. & 14. JOHNE GRIERSOUN of Lag *against* LORD ZESTER.

GIF ony man, accusit in the justice air for spuizie, reif, thift, or laying waist of ony landis, takis him to his remission thairfoir, and then instantlie denyis the space, of the with-halding of the gudis, or laying waist of the landis, and quantitie of the profitis thairof, protestand solemnlie, that his confessioun hurt him not befoir the civil Judge anent the space of the zeiris, and quantitie of the proffitis, without the samin be sufficientlie provin befoir him, as accordis of the law; he, nor his sovertie, gif ony was fund be him befoir the Justice, sould not be compellit befoir the civil Judge to pay the proffitis of the said gudis or landis, except the samin be provin be witnesses, writ or otherwayis; for in this cais the confessioun contenit in the act of adjournal is not sufficient probatioun; because the samin was maid be the persoun accusit, the time of his accusatioun, for just feir of his life, and dreadour that micht fall in ane constant man. For it is to wit, that the confessioun of ony partie in the justice air takand him to his componitur, for ony spuizie or uther crime, preivis befoir the civil Judge, the wrang, crime, nor profitis, nor time of the alledgit spuizie, gif he in the mene time protestis, that the samin confessioun sall not be hurtful nor prejudicial to him: Bot gif na protestatioun be maid be him, the act of adjournal of his confessioun, contenand the proffitis, zeiris, and times of the spuizie, or uther crimes, is just and sufficient probatioun againis him, 13th Julii 1541, or his sovertie, gif ony be fundin be him, for satisfioun of partie; and misteris na farder probatioun be witnessis, or utherwayis, tuiching the doing and committing of the said crime; and the prices, and avail of the gudis spuiziet, aucht and sould be referrit to the aith of the persewar.

Fol. Dic. v. 2. p. 350. Balfour, (OF ACTIS OF ADJOURNAL.) No 7. p: 498.

No 1.

A judicial declaration, though extracted from the books of adjournal, found no sufficient probation, before a civil judge *ad civilem effectum*, if the party had protested; otherwise if he had not protested.

* * Sinclair reports this case :

No 1.

IN the cause of John, Lord Hay of Yester, it was decreet, that a confession of party, made in the criminal court, taking him to the componitors for all the crimes imputed to him, proves not *in causa civili* the wrong, nor the profits of the alleged spuilzie, when the party in the said criminal action protests for the same, and so because the years of the alleged oppression and profits, confessed in the acts of adjournal by his party adversary, was not otherwise proved before the Sheriff. The said Lord produced an enrolment of Court, and was there said, had not been the said protestation, the said act containing in special the profits of the years had been just probation.

Sinclair, MS. p. 2.

1541. February 13.

The VICAR of KINGHORN *against* The LAIRD of SEAFIELD.

No 2.

Conviction in a criminal court held to be proof of violent intrusion in an action *ad civilem effectum*.

IN the Vicar of Kinghorn's cause against the Laird of Seafield, the LORDS found, by interlocutor, that the act of adjournal, where the Laird took him to his compositors for all crimes, the whilk Laird then protested for all his defence, as an instrument before the Lords shew, and albeit the said Laird was indicted for violent occupation of a part of the said Vicar's glebe, and holden waste on the other part, for the space of six years, and took then to his compositor upon the said crime *sub illa protestatione*; the said Lords decerned the act of adjournal sufficient proof of the deed and quantity, and so admitted the said Vicar to prove the said violent and waste-holding by the said space, and would not admit the said Laird to prove, that by the said space the said Vicar, by himself and his servants, occupied all the said kirkland and glebe, because that exception was direct contrary to the summons of the other party, and so the practice ought not to be admitted.

Ecl. Dic. v. 2. p. 350. Sinclair, MS. p. 10.

No 3.

Altho' the books of adjournal bore that the panel had confessed a spuilzie, this found no

1542. July 13. VICAR of KINGHORN *against* LAIRD of SEAFIELD.

THE LORDS absolved the Laird of Seafield from the wrongous and violent occupation of one half of the vicarage of Kinghorn's kirklands, and the waste of the other half, contained in the said Vicar's summons, raised against the said Laird upon an act of adjournal, in which was contained how the said Laird was indicted, came in the King's will, and found caution for satisfaction.