

jacent to the said burgh, and who pastured oftentimes their goods and cattle upon the said commonty, may be witnesses to the said Provost, Bailies, and community, and it then appeared to the Lords, that they were suspected *ratione affectionis ad causam*, and because they got in pasturing foresaid profit of the said community; and also it was alleged by one of the Lords, that for the same cause witnesses were repelled of before in the like cause of the community of Renfrew and Rugland, in *qua causa erat quidam pauper N. Nicolson*; but this day, in *causa communitatis de Selkirk non fuit decisum*.

No. 26.

*Fol. Dic. v. 2. p. 390. Sinclair MS. p. 9.*

\* \* Balfour reports this case :

In an action of ejection and spuilzie pursued betwixt two parties, if a third person compares and alleges the lands to pertain to him, and desires to be admitted in the cause for his interest, he ought not nor should not be admitted, because he, by disputation upon the property and ground right, may not stop the action of spuilzie or ejection.

*Balfour, p. 473.*

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1541. *March 9.* HALIBURTON *against* RUTHERFORD.

THE brocard, *spoliatus ante omnia restituendus est*, does not hinder the defender to insist in a reduction of the decret of spuilzie, although he has not obtempered the same. That brocard only takes place *quando agitur de proprietate rei spoliatae, vel de alia re, agendo principaliter, at non quando agitur per viam reductionis ad retractandam sententiam super spolio contra aliquem latam*.

No. 27.

*Fol. Dic. v. 2. p. 390. Sinclair MS.*

\* \* This case is No. 2. p. 13491 *voce* REDUCTION.

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1629. *July 7.* LADY RENTON *against* Her SON.

IN a spuilzie of teinds, found, That although the pursuer's title had not been good, but that the defender's had been better; yet she had good ground to pursue this action, *quia spoliatus ante omnia restituendus est*.

No. 28.

*Fol. Dic. v. 2. p. 390.*

\* \* This case is No. 20. p. 14733.