

spoliatus non tenetur de titulo suæ possessionis docere, quam vis de titulo mentionem facit in libello; but in case he would conclude that restitutiones et possessiones terrarum tanquam hæreditarie sibi pertinentur, hunc enim dicebant, oportet eum summarie docere de sua proprietate et titulo, licet hunc plenariæ proprietatis cognitis non haberet locum; de hoc vide, ut in nostris decisionibus, quibus spoliatus docere debeat de titulo possessionis suæ etiam plene.

Fol. Dic. v. 2. p. 389. Sinclair MS. p. 6.

No. 13.

1543. *March 6.* DUNDAS *against* HOG.

THE LORDS decerned Nicol Dundas' precept of spuilzie against Helen Hog relevant, so far as it bore the said Nicol in possession of the mill and mill lands of ——— at the time of the alleged spuilzie, although the man's quantity of the possession was not specified in the precept and libel.

Fol. Dic. v. 2. p. 389. Sinclair MS. p. 57.

No. 14.

* * * Balfour reports this case :

In actions of spuilzie, the pursuer ought and should libel, that he was in possession of the lands or goods spuilzied the time of the spuilzie; and it is sufficient to libel the same in possession in general, suppose he specify not in his libel the manner and quantity of his possession.

Balfour, p. 315.

1548. *March 22.* JANET MONTGOMERY *against* JOHN HAMILTON:

In actions of spuilzie and ejection, the pursuer ought and should libel possession, and violent ejection, and prove them both sufficiently; and it is not requisite that he libel any title: But if he libels a title with his possession, it is not necessary to prove the same, but ought and should show the same, *quia tenetur ostendere, sed non probare.*

Fol. Dic. v. 2. p. 385. Balfour, p. 315.

No. 15.

Found in conformity to Ogilvie *contra* Restalrig, No. 14. p 14630.

1549. *January 21.* L. of MERCHISTON *against* NAPIER of Wrightshouses.

ONE being in possession of any part of teinds, by virtue of any right or title which he has to the whole, may call and pursue for spuilzie of the whole; because possession of one part in this case induces possession of the whole.

Fol. Dic. v. 2. p. 389. Balfour, p. 472.

No. 16.