

M O V E A B L E S.

1583. *May.*BEVERIDGE *against* INHABITANTS OF CUPAR.

JAMES BEVERIDGE of the Hilton pursued for reduction of a decree given before the Sheriff of Fife, by virtue of which there were certain goods, oxen, cows, and sheep, pertaining to the said pursuer, poinded, and thereafter appraised and sold, and disposed to certain persons, indwellers in Cupar of Fife; which persons were pursued by him, together with his son, and the officer, for the spoliation of the said goods from him, they being then in his possession as his own proper goods; at the time of the advising of the process, there was no other thing found to be proven, but the officers coming to the ground, and his taking away the said goods, and thereafter the lawful appraising of the same; so the question fell forth *inter Dominos*, if that the persons who cost the goods, after that they were lawfully appraised, should be debtful of the same or not. For the 1st, it was reasoned *inter Dominos*, That, because the said persons had cost the said goods *bona fide et auctoritate judicis*, they could not in any sort be debtful, either in spuilzie or otherwise, 'pro hac re facit L. 1. Cod. Si in causa judicati pignus captum sit. Verba legis sunt; "Nam in vicem justæ obligationis succedit ex causa contractus auctoritas jubentis;" et in L. 3. ibidem, "In causa judicati pignora ex auctoritate Præsidis capta potius distrahi quam jure domini possideri consueverunt." By the meaning of these laws, it appears to be plain, that the persons who cost the goods, after they were lawfully appraised, and then roup'd at the market cross by the officer of arms, did nothing but lawfully therein; and so the persons, buyers off the same from the officer, after the appraising and roup'ing of the same, did lawfully thereintill, for otherwise, if such inconveniencies were ay to fall forth in the buying of the appraised goods, that no person should buy or take the same off the hand of the officer, fearing ay danger and inconvenience to come upon the same, which should be to the great hinderance and stay of the execution of justice. To this was answered, That the decret reductor behoved to take effect, which contained

No 1.

A decree upon which goods had been poinded and roup'd, was reduced. The buyers, though *bona fide* purchasers, were found obliged either to restore the goods, or the price thereof, because the decree being reduced, all that followed on it behoved to fall of consequence.

No 1.

into it both spoliation and restitution of the goods which were taken away, and that the interposition of authority of the judge in this case might be held, "non factum iudicis sed partis, ut in L. 13. Cod. De evictionibus, et ibid Bald. et in L. 1. § 5. D. Ne vis fiat ei qui in possessionem missus erit, et ibidem Bart. et communiter doctores;" and also, it was lately practised betwixt the Laird of Ruthven Vans and Coutts of Auchtertoul, (*see* APPENDIX), that the said Auchtertoul, albeit he had pointed goods and gear by virtue of a decree, was decerned to have committed spuilzie.—THE LORDS, after long reasoning among themselves, pronounced *definitive*, and decerned the buyers of the said goods from the officer, to restore and deliver the said goods, or else to pay the prices of the same, as they were appraised and roup'd, to the pursuer, *et hoc omnes Domini una voce dicebant, quod rarum est.*

Fol. Dic. v. 1. p. 592. Colvil, MS. p. 364.

1629. July 2. BISHOP OF CAITHNESS *against* FLESHERS in EDINBURGH.

No 2.

A *bona fide* purchaser of a stolen horse was found liable in restitution to the owner, though he had purchased it in a public market.

Fol. Dic. v. 1. p. 592. Auchinleck.

* * This case is No 2. p. 4145. *voce* FAIRS and MARKETS.

1639. March 19. FERGUSON *against* FORREST.

No 3.

A PERSON buying a stolen horse, though in a public market, is liable in restitution to the owner, and the only security the purchaser can have is to take burgh and hamehald from the seller, according to the old laws of the realm.

Fol. Dic. v. 1. p. 592. Durie.

* * This case is No 3. p. 4145. *voce* FAIRS and MARKETS.

1662. June. WRIGHT *against* BUTCHART.

No 4.

Moveables in a house, let with the house, cannot be sold by the tenant, for the proprietor may evict them, *a quocunque Possessore.*

THERE being an adjudication purchased of certain tenements in Leith, and of the heirship moveables belonging to umquhile James Johnston in Leith, against Isobel Johnston his sister, who had renounced to be heir to him; this adjudication is assigned to James Wright hatmaker, husband to the said Isobel, who sets the lands to Alexander Comrie; and he, as tenant, enters to the possession thereof, and of the heirship moveables within the house; which Alexander having possess the house and goods diverse years, he did thereafter dispoise the goods to John Butchart, who meddled therewith; whereupon the said James