

the accompt produced, to be the accompt to which the missive letter relates, unless the suspenders will offer to prove by the Earl's oath, or the writ, that there was an other accompt given in.

No 259.

*Sir P. Home, MS. v. 1. No 391.*

1730. June —.

EWART *against* MURRAY.

No 260.

IN an action for the price of a parcel of sheep, sold and delivered to the defender's predecessor, about forty years preceding the date of the action; the question occurred, whether this action was subject to the triennial prescription of merchants accompts, or to the quinquennial prescription of bargains concerning moveables. It was found to fall under the quinquennial, and not the triennial prescription. (See APPENDIX.)

*Fol. Dic, v. 2. p. 118.*

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DIVISION IX.

Triennial Prescription.

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SECT. I.

Of Spuilzies and Ejections.

1587. January —.

CONSTABLE of DUNDEE *against* The LAIRD of STRATHMARTIN.

THE Constable of Dundee pursued the Laird of Strathmartin, for the wrongous intromission and away taking of the teinds of certain lands, and that pertaining to him by virtue of his inhibition and tack. *Answered*, That the action being of the nature of spuilzie, was prescribed by reason of the act of Parliament, that all actions of spuilzie prescribed, except they be pursued within the space of three years after the committing of the same. *Answered*, That this was not action of spuilzie, but of wrongous intromission, and the act of spuilzie differed from the same *in tantum quod in actione spoliij juratur in litem*, and so

No 261.

Found that the act Parliament about prescription of spuilzies and ejection, (1579, c. 81.) concerns only the privileges of the action, viz. the *juramentum in litem*, &c.

No 261. the act of parliament ought to be understood according to the words, *quæ sunt* all actions of spulzie and of the like nature, behoved to be interpreted *ubi juratur in litem*. THE LORDS found, that the party might pursue for wrongous intromission, upon the inhibition, notwithstanding of the act.

*Fol. Dic. v. 2. p. 118. Colvil, MS. p. 420.*

1610. February 2. CRAIGHALL against KINNINMONT.

No 262.

INTRUSION not pursued within three years, expires and prescribes, as well as actions, especially if any greater profits be libelled nor the ordinary mails and services, in respect of the act of Parliament anent prescription in spuilzies, actions, and others of that nature.

*Fol. Dic. v. 2. p. 119. Haddington, MS. No 1778.*

1610. July 18. CORBET against VANS.

No 263.

AN action pursued for demolishing a mill, and thereby withholding the profits thereof, extending to 4 bolls victual daily, together with the materials, extending to 5000 merks, found to be prescribed by the act of Parliament of prescription of spuilzies, actions, and causes of that nature.

*Fol. Dic. v. 2. p. 119. Haddington, MS. No 1972.*

1624. February 25. DUNMUIR against PAYWEELL.

No 264.

A spuilzie having been restricted to wrongous intromission, because not pursued within the three years; the Lords refused to allow any profits, whether ordinary or violent; and found that the pursuer could seek only *ipsa corpora*.

IN an action of spuilziation of certain sheep pursued by Dunmuir, flesher in Edinburgh, against one called Payweell, which action was restricted to wrongous intromission, and the spuilzie past from, because it was not pursued within three years; the LORDS found, That no profits ought to be granted in actions of wrongous intromission, neither ordinary nor violent profits; and that in such actions the pursuer had right only to pursue, and seek *ipsa corpora*, without profits, albeit he contended that the wrongous intromission gave him right to seek the ordinary profits; for though he passed from the spuilzie, which he behoved to do for not pursuing the same within the time appointed by the act of Parliament, yet that never purged the wrong done to him by the defender, but took only away from him that privilege of *juramentum in litem*, which he had, if the spuilzie had been sustained; but in all other consequences, he alleged that his action stood good to him for the profits of so many goods as should be proved