

ing of the summons, the same goods and gear to the owner thereof, or to his wife and servants, as good as they were the time they were taken away.

No. 30.

Fol. Dic. v. 2. p. 390. Balfour, p. 472.

1541. *March 24.* MILLAR *against* LORD KILLAIRNIE.

A MAN may be pursued for spuilzie of all the goods away taken, though he offered back a part thereof.

No. 31.

Fol. Dic. v. 2. p. 390. Balfour. Sinclair.

* * This case is No. 2. p. 14323.

1575. *April 21.* DUNBAR *against* CRAWFURD.

ANENT the action pursued by J. Dunbar against Crawford for spoliation of certain goods, and especially of a brown cow, the defender alleged that the pursuer, upon the sixth day after the alleged spuilzie, intromitted and took again the said brown cow, and therefore has no action for the said cow; which allegiance of the defender the Lords repelled.

No. 32.

Fol. Dic. v. 2. p. 390. Colvil MS. p. 243.

1610. *January 12.* ——— *against* FOSTER.

A PURSUIT being moved against Mr. Duncan Foster and his brother, and accomplices, for spuilzie of a horse, he excepted that he received him *incontinenter* within four or five days after the alleged spoliation, in as good case as he was taken away, with offer of a merk for the profit of that he had detained him, and because the pursuer refused to receive him, he left him upon the pursuer's ground which he was taken from. It was answered, That the offer was not relevant after so many days detention, unless the restitution had been really offered within 48 hours, because the pursuer was not holden to receive back his horse, after his adversary had violently taken him away, and outridden and bursen him by the space of five or six days, especially seeing this summons was raised within 43 hours after the spuilzie, and divers days before the pretended offer of restitution. The pursuer offered to prove, that *incontinenter* after that offer, the pursuer's brother, who was with him at the spuilzie, took away the horse immediately after

No. 33.

It is not sufficient to offer a spuilzied horse again back after the defender has been summoned, except he be in as good a case as at the time of the spoliation.

No. 33. the offer, keepled, detained, and used him at his pleasure ; in respect whereof the Lords repelled the exception.

Fol. Dic. v. 2. p. 390. Haddington MS. No. 1729.

1616. February 8. GIBB *against* DOBY.

No. 34.

IN an action of spuilzie pursued by John Gibb *contra* ——— Doby in Kirkcaldy, the Lords found an exception upon a lawful poinding, which was not used at the market cross, relevant with this eik, that the defender offered to re-deliver the goods poinded within the space of a month in as good a state as they were.

Kerse MS. p. 198.

1611. February 23. KNOWS *against* LEARMONTH.

No. 35.

Restitution, even within an hour, not relevant, unless made *cum omni causa*.

ROBERT KNOWS, indweller in the Water of Leith, pursues Joseph Learmonth, baxter in Edinburgh, for spoliation of a horse. Alleged no spuilzie, because within one hour after, the defender restored the horse to the pursuer's man, from whom he is alleged to have spuilzied him, and so cannot be called as a spuilzier, especially seeing the pursuer and his horse were bound in service to the baxters of Edinburgh for carrying of their loads and stuff between Edinburgh and the common mills, of which bakers the defender is one, and so he might intromit, and he did restore. Replied, Ought to be repelled in respect of the violent spoliation and away taking libelled, and, for the offer made of restitution, non-relevant, except it were said *cum omni causa*, which he cannot say, because he offers to prove, that before the offer to restore, his back was broken with the weight of a burden laid on by the defender. Did admit the reply and summons.

Learmonth, Sharp, & M^cGill.

Fol. Dic. v. 2. p. 390. Nicolson MS. p. 394.

1624. March 3. LESLIE *against* INGLIS.

No. 36.

ALLEGED for one of the two defenders : He poinded the horse from the pursuer, on a sentence, upon the ground ; and while he was taking him to Cupar, where he put him in a stable, and offered him corns and straw, he refused, and rammaged to death :—Finds the allegiance relevant.

Clerk, *Durie.*

Fol. Dic. v. 2. p. 390. Nicolson MS. No. 588. p. 400.