

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 dispone the goods to John Butchart, who meddled therewith; whereupon the said James