

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

Wright pursued Butchart for the price of the goods. It was *alleged* for Butchart, That he ought to be assoilzied, because he had right to the goods by a written disposition from Comrie, who, as owner, had possess the samen, without payment of any duty therefor; and, conform to the disposition, the goods were delivered to the defender by way of instrument, and he in possession accordingly. It was *replied*, That the defender cannot be heard to say, that Comrie was owner; because the goods were *per expressum* adjudged from the apparent heir of James Johnston, who was in possession thereof, and they extant within his dwelling-house; and Comrie cannot say that he was in possession thereof otherways than a tenant in the house under James Wright, to whom, though he paid not duty expressly for the goods, yet having taken the house from him for payment of mail and duty, and as tenant having entered to the possession of the house where the goods were, and accordingly having possess both house and goods, any possession Comrie had was the pursuer's possession, and consequently the defender's right, and pretended possession, cannot be respected.

THE LORDS repelled the allegiance, in respect of the answer or reply.

Gilmour, No 46. p. 33.

1666. *January.*

RAMSAY *against* WILSON.

COLONEL CUNNINGHAM gives in custody to the deceased Mr James Aikenhead, certain curious jewels of a considerable value, conform to an inventory under Mr James his hand: Thereafter the Colonel goes for Germany, and being there, draws some bills upon Mr James, who answers them accordingly. The Colonel dies, and the jewels remain in Mr James his hands all this time: Mr James assigns the bills to John Ramsay, his brother-in-law, who gets the keeping of the jewels also; and a bond is granted by him and Mr Robert Byres, for the Colonel's use, to make them furthcoming. After the incoming of the English, John Ramsay having hid the jewels in a coal-cellar in his house at Edinburgh, the said Mr Robert deals with the damsel of the house, and gets the jewels, and carries them north with him: And after the English were settled, he returns and keeps still the jewels, till after several years, Mr Robert being become very necessitous, he did impignorate diverse of the jewels to James Wilson, and others; and, before he redeemed them, he died. The said John Ramsay, by his assignation granted to him by Mr James Aikenhead, his brother-in-law, to the Colonel's bills, confirms himself executor-creditor to the Colonel, and pursues the havers of the jewels, to make them furthcoming to him. It was *alleged* by James Wilson, That he should be assoilzied; because, the jewels having been in the possession of the said Mr Robert Byres for many years, it was lawful for the defender to take them as pledges for money

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Found, that jewels, and other such valuable moveables, being disposed of by a trustee, tho' they pass through *mille manus*, the haver of them is liable in restitution to the proprietor.