

years old ere he died, and so no witnesses can be adduced for proving that point but such as must be past eighty.

*Advocates' MS. between No. 15 and 16, folio 73.*

1670. June 15.

WOOD *against* REOCH.

THIS was a spulyie for eliding whereof there being an exception (offers to prove lawfully pointed) proponed, the pursuer craved he might condescend, by virtue of what he had pointed; of a sentence or a bond. The defender answered, of a sentence recovered on a bond granted by this pursuer to the defender.

REPLIED,—The defender can never be heard to maintain his pointing, and defend himself from a spulyie by that sentence and bond; because the pursuer offers him to prove that he has obtained reduction in *foro* of that bond, and all that has followed thereon *ex capite minoritatis et læsionis*.

DUPLIED,—The reply *nullo modo relevat* to make the defender a spulyier, unless he say he had obtained the said decret of reduction before the pointing.

TRIPLIED,—That if his decret be found posterior to the pointing, then he is content to restrict his summons to vitious intromission and restitution of the goods intromitted with by virtue of the said pointing. The Lords restrict the summons *ut supra*.

*Vide Hope, tit. Spulyie, folio 172, in calce.*

*Act. Hog.*

*Alt. Chalmers.*

*Advocates' MS. No. 16, folio 73.*

1670. June 16.

RIDDOCHS *against* SORLEY.

THIS was an action for making up the tenor of a disposition: ALLEGED this action cannot be sustained, because the said disposition being dated *in anno* 1626, there was nothing followed thereon while the intending of this cause, which was not till 1667, and so the said writ was prescribed.

ANSWERED,—There was a summons of removing raised and executed within the forty years of prescription, which interrupted the same.

REPLIED,—That it is a rule of law *non prestat impedimentum quod de jure non sortitur effectum*, but so it is, that summons was elided by an unanswerable defence of twenty years' possession before the same, by virtue of a right standing unreduced, and therefore could produce no effect, not even as to the interruption of prescription.

The Lords found the said summons (though the same was taken away *ut supra*) was sufficient interruption.

And the *casus omissionis* being libelled to have been the time of the plague in 1645, the said condescence was sustained, since *tempus pestis est tempus calamitosum et privilegiatum*.

*Act. Bailzie.*

*Alt. NORVELL.*

*Advocates' MS. No. 17, folio 73.*