

1665. *January 27.* BEARFORD *against* LORD KINGSTON.

No. 55.

THOUGH an inhibition of teinds, without a sentence following thereon, is no sufficient title for drawing the teinds *ipsa corpora*, yet it was found a colourable title to bar a spuilzie; and therefore the process was only sustained for wrongous intromission.

*Fol. Dic. v. 2. p. 392. Stair.*

\* \* This case is No. 7. p. 1817. *voce* BREVI MANU.

1677. *June 26.*

A. *against* B.

No. 56.

THE defender in a spuilzie having alleged, that the goods were his own, and that, having given them to the pursuer to be grazed, he might have taken away his own goods, it was replied, That the pursuer was not obliged to debate the right and property of the said goods; but *in spolio*, he needed libel no more but that the goods were upon his ground and in his possession, and taken away *vi* and in manner libelled; and *spoliatus ante omnia restituendus*.

The Lords debated among themselves, whether the defence be relevant; and did not decide the case; some being of opinion, that if it should evidently appear that the pursuer was not in possession of the goods as *suos*, but in behalf of the defender, as if there were a writ betwixt the pursuer and defender, bearing, that the goods were the defender's, and that the pursuer *contractu locationis et conductionis* had taken the same in grazing, that the defender could not be liable for spuilzie of his own goods; but if it should appear that there was any violence in taking them away, he may be pursued for a riot.

*Dirleton, No. 459. p. 222.*

1679. *December 2.* BETHUNE *against* HUME.

No. 57.

MR. JOHN BETHUNE having obtained a decret of spuilzie of a horse against Hume of Bastalrig, before the Lords, upon probation *in* absence, Hume suspends, on this reason, that the horse was pasturing upon the Lady Aiton's ground, to whom he was Bailie, and that he had put the horse in a pound-fold, and had offered him back, upon payment of the skaith, and therefore did no wrong to retain him, at least was free of a spuilzie, and so was only obliged to restore. It was answered, That the reason is not relevant; for though it had been true, it was no ground for the suspender to keep the horse, and apply him to his own use, even though satisfaction had been required, and refused, which could not confiscate the horse, or warrant the suspender to make use of him, but he ought to have, by a process,

Spuilzie of a horse pasturing on another's grass not elided by putting him in a pound-fold.