

* * Fountainhall reports this case :

1682. *March 1.*—In the case of Mr. John Kincaid, advocate, against ———, “ the Lords found the act of indemnity in July, 1679, did not discharge this spuilzie of horses now pursued for, seeing they were not taken *tanquam præda hostilis in flagrante bello*, but the next day, two miles from Bothwel-bridge, the place of the battle; and it was not proved that they belonged to any who were in that rebellion.”

No. 58.

Fountainhall, v. 1. p. 177.

1683. *February.*

DAVID RAMSAY *against* DAVID and WILLIAM BARROWMANS.

No. 59.

In a spuilzie for violent profits, at the instance of the owners of horses seized by some persons at the first rise of the western rebellion,

Alleged for the defenders: That they were secured by the indemnity, and could not be liable in a spuilzie, which is penal; nor yet in simple restitution, seeing the horses were lost, and the defenders made no benefit by them.

Answered for the pursuer: This process being neither *vindicta publica*, nor *privata*, but only *pretiosa*, for damage and interest to a party lesed, it cannot fall under the indemnity. *2do*, The horses being robbed, without special warrant of officers, and before they were formed into any companies, the deed must be considered as a private depredation.

The Lords did not sustain the spuilzie as to all the violent profits contained in the decret; but allowed to the pursuer the prices, with the annual-rent from the time the horses were taken away, and large expenses; and found all the defenders liable *in solidum*.

Harcarse, (SPUILZIE) No. 858. p. 244.

1683. *November.* WILLIAM THIN *against* SCOT of Langshaw.

No. 60.

One being pursued for the spuilzie of a horse and a load of corn, alleged, That the horse (which belonged to the miller of a mill without the barony) was lawfully seized and detained as escheat, conform to the statute of King William, Cap. 9. for carrying the defender's tenant's corn to a mill out of his barony to another mill;

Answered: The statute is now in desuetude.

The Lords found the defender liable for restitution of the horse *in statu quo*; but refused to find him guilty of a spuilzie, in respect of the colourable pretext he had for seizing and detaining the horse from the said statute.

Fol. Dic. v. 2. p. 391. Harcarse, (SPUILZIE) No. 860. p. 244.