

less he sould have callit the possessouris of the saidis gudis and geir to have heard the samin decernit to pertene to him be virtue of his gift.

No. 40.

Balfour, p. 471.

1543. February 23.

RHIND against MAY.

No. 41.

Andrew Rhind got a gift of the common clerkship of St. Johnston, and was in possession of the office by virtue thereof, and thereafter Mr. Duncan May got the King's request to the Provost, Bailies, and Commony of the said town, to give the said office to him as vacant by the decease of him by whose decease the said Andrew had gotten it, and at the said request they made a new gift to the said Mr. Duncan, and he by virtue thereof possessed the said office seven years or thereby: Then the said Andrew called the said Mr. Duncan for spuilzieing him of the said office. He excepted, that in the uptaking of the said office, he did no wrong nor spuilzie, because he was entered thereto by virtue of his gift, and the Provost's and Bailies' authority. The Lords, notwithstanding, decerned him in spuilzie, because he entered into the said Andrew's office, and put him forth thereof without order of law, he never being called nor orderly destitute of the said office.

Sinclair MS. p. 46.

1543. February 26.

WAUCHOPE against BORTHWICK.

No. 42.

William Wauchope, agebat de spolio quorundam bonorum contra Borthwick, qui exceptit quod ipse virtute precepti vicecomitis sui, got these oxen apprised to him for a sum that he had obtained against the said Wauchope by a decret of the Sheriff, et quod excusari spoliatio virtute precepti et auctoritatis judicis deberet, quamvis ei per dictum decretum debitum esset solutum. The Lords decerned and condemned him in the spuilzie of the oxen, notwithstanding they were apprised to him by an officer, *quia* he was *in culpa lata*, and received the precept wrongously, nothing being owing to him.

Eol. Dic. v. 2. p. 391. Sinclair MS. p. 41..

1575. November 30.

MUIRHEAD against LAWSON.

No. 43.

Marion Muirhead, relicta quondam Richardi Ramsay pursued Robert Lawson for spoliatio of certain goods, corns, cattle, and insight. The defender alleged, that her umquhile husband was denounced rebel, and he donatar to his escheat of all goods; and the gear alleged by the pursuer to be spuilzied, was the said

A donatar intronitting with goods in possession of the rebel's relict, before it

No. 43.
was proved
that they be-
longed to the
defunct, was
found liable
in spuilzie.

Richard's gear at the time of his decease, and therefore the defender did no wrong in intromitting with the gear libelled, but might have lawfully done the same by reason of his gift of escheat foresaid. The pursuer alleged, that after the decease of her husband, the defender should not have intromitted therewith at his own hand, until it had been proven before the Judges that the gear had appertained to the said Richard at the time of his decease, and a declarator past thereupon; which allegiance of the pursuer the Lords found relevant, and referred the libel to her probation, and repelled the allegiance of the defender.

Fol. Dic. v. 2. p. 391. Colvil MS. p. 249.

1576. December 4. KELWOOD against EARL of CASSILLIS.

No. 44.
The pursuer
ought to have
his oath *in*
litem in the
case of spuil-
zie of writs,
although the
defender may
have had a
colourable
title.

Anent the action pursued by the Laird of Kelwood against the Earl of Cassillis, it was alleged by the pursuer, that the said Earl entered by violence into his house, and not only spuilzied the goods and gear being there, but also took away his whole evidents and writings pertaining to him. It was alleged by the said defender, that he did neither wrong nor spuilzie in entering into the said pursuer's house, and intromitting with the gear being therein, because at the said time the pursuer was denounced the King's rebel, and put to his Highness's horn, and the said defender had obtained the escheat of the pursuer, and therefore did neither wrong nor spuilzie in intromitting with his gear; and if recklessly, among other gear, he intromitted with his evidents and writings, the pursuer could not call that spuilzie, but allenarly wrongous intromission; which allegiance of the defender was repelled by the Lords.

Fol. Dic. v. 2. p. 291. Colvil MS. p. 254.

1583. July. BALMAINS against BALVAIRD.

No. 45.
Found in
conformity
with the
above.

In the action pursued by the Laird of Balmain for spoliation of certain evidents, the libel being admitted to probation, and the process being advised, and the libel found proved, it was alleged by Balvaird, that the said Balmain ought not to have the quantity of the evidents and writs contained and expressed in his libel to his probation, because the Laird of Balvaird intromitted with the evidents *bona fide*, and by gift of Balmain's escheat being disposed unto him, he raised letters thereupon, and by virtue of the same did intromit with the evidents. It was answered, That the gift and disposition of the escheat takes in dispositions of sums of money, but heritable evidents and infeftments could not come under escheat conform to the daily practice and laws of this realm; and therefore, in so far as he did intromit with his heritable evidents and infeftments he committed spuilzie, and having