No. 3. fits of the goods that might have been pastured upon the said lands, like as lambs, wool, stirks, butter, and cheese, but allenarly for grass-mail of the goods; considering the said Laird had no goods upon the ground, nor yet libelled that any goods were spuilzied from him; which allegeance and exception were repelled, and the libel found relevant, according to the common law.

Maitland MS. fi. 34.

1563. *Jan.* 17. ELIZABETH HULDIE *against* THOMAS STEILL.

No. 4.

Oxin, horse, or cattell, beand spuilzeit, the awner thairof has na action for the proffitis of his landis, or for the skaith sustenit be him in not manuring, labouring, teilling, or sawing of his landis, throw the wanting of the saidis gudis spuilzeit, gif he, efter the committing of the said spuilzie, labourit and manurit his landis in sic manner as he was wont to do befoir the committing of the samin.

Balfour, (SPUILZIE) *fi.* 467.

1580. *July.* CLARK *against* SINCLAIR.

No. 5.
A party stopped pan-wood from coming to another man's salt-pan. He libelled the loss of so much salt daily. The Lords found relevancy, but subject to modification.

There was one Clark in Dysart that pursued my Lord Sinclair for the violent ejecting him forth of a salt-pan, the which he had in feu and heritage of the said Lord; and he qualified his ejection into this sort, that the said Lord stopped his colliers which were hewing in the heugh coals and pan-wood to the pan, in so far as he compelled the said colliers to hew to himself, and compelled the leaders that led to Clark's pans to lead to his own behoof, and so, through inlake of the coals, the pan lay idle, therefore he concluded the profit of the salt, albeit he was but ejected furth of the winning of the coals. It was excepted against the summons, by my Lord Sinclair, That the summons was not relevant to infer such an ejection, and that because he qualified only the stopping of the hewers and leaders of coal, and compelled them to lead into his own behoof, whereby he could not infer the profits of salt, but, at the most, the coals that were spuilzied; and the inconvenience appeared to be great for either of stopping of coals or away taking of the same to infer any ejection and interest of profits of a salt-pan, in respect he libelled not continuum actum, but he did the same at such a time, for albeit he had stopped the leaders, he might have got other leaders, and so super unico actu vel super diversis actibus, there ought not to be set a continual ejection and interest of profits of 10 or 12 hundred merks, as was libelled, but only the profits of things which were taken away; which were coals. To all this was answered, That there was no inconvenience, and that it might stand both together to libel ejection, by stopping and compelling of his colliers, and also spoliation of coals, et quod potuit actor interdicto unde vi et etiam actione bonorum

raptorum in uno lybello; for it might stand, that all men must be ejected out of his ground and portion, and also his gear taken away off the same ground at the same time; and as to the interests and profits of salt, the same might be refunded, because quod tam in actione bonorum raptorum et unde vi sit restitut. cum omni causa damni; for if the pursuer had not been stopped in hewing and leading of his pan-wood, he would have carried the same to the pan, and converted the same in making salt, et de jure tenetur is qui vim intulit restituere omnes fructus quos ejectos non percepit. The Lords by interlocutor found the summons relevant, and admitted the same to probation; nevertheless, they reserved the modification of the profits to themselves, because immensas petebat actor, and that there were some expenses necessary to be deducted, as were the expenses of winning of coal, leading, and carrying of the same. No. 5.

Colvil MS. p. 79. & 80. *(Second Copy.)*

1582. *July.* DAMITSTON *against* MAGISTRATES of LINLITHGOW.

No. 6.
Action for violent profits was found competent, only to him who was in actual possession.

There was one David Damitston that had obtained a decree against certain of the Baillies of the town of Linlithgow, and certain others, for the demolishing and downcasting of a new mill pertaining to the said David, therefore he pursued the said persons for the violent profits. It was answered, That he could have no action to pursue for the violent profits into his name, because he was not occupier. To this was answered, That the action of the violence was ay accessory to the principal debt et accessorium sequitur naturam principalis. The Lords found by interlocutor, That he could have no action to pursue for the violent profits, because he was not occupier himself, but that the action was only competent to him that really occupied and was in possession.

Colvil MS. p. 339.

1595. *June* 2. ROSS *against* LADY FOWLIS.

No. 7.
A life-rentrix assigned an action of removing, and died after litiscontestation. An emergent exception thus arose against removing, but violent profits were found due.

Ross, assignee constituted by the Lady Fowlis to a warning and action of removing pursued by her against certain tenants of her conjunct-fee lands, having made litiscontestation, and used some probation thereintill, it was alleged by the defenders, that they could not be decerned to remove at this pursuer's instance, and to suffer him to enter and possess, because his right was an assignation granted by a life-renter, who being deceased, there was an emergent exception competent to them, in respect of the Laird of Fowlis' heritable infeftment, which was convalesced by the death of the life-renter, and he being their master, they could not be decerned to remove. The Lords found, That the pursuer's action for removing from the ground was taken away by the decease of the lady life-renter, his