

SPUILZIE.

SECT. I.

What understood to be a Spuilzie.—What Damages allowed.

1541. *March 9.* HALIBURTON *against* RUTHERFORD.

FOUND, That it was a relevant exception against a spuilzie, that the defender was in possession, and the pursuer having *brevi manu* entered thereto, the defender expelled him *incontinenter*.

No. 1.

Fol. Dic. v. 2. p. 389. Sinclair MS.

* * This case is No. 2. p. 13491. *voce* REDUCTION. The contrary was found, when the defender was expelled *ex intervallo*. See Douglas *contra* Boig, No. 3. *infra*.

1541. *March 24.*

JOHN MILLAR *against* The LAIRD of KILLARNIE and Others.

JOHN MILLAR, servant to the Earl of Rothes, was winnowing his bolls of shilling upon the Cumingair-hill of Lindors, within the bounds of the said abbey; and because he was upon the said abbey's ground, the Abbot and the Laird of Killarnie, his bailie, and his officers, with their complices, came, took, and poynded the said John Millar, being thereon, and also poynded his sacks and winnowing cloths, and temitt the sacks, and cast out the said John's shilling upon a hillock, so that the said shilling was fyled and spilt. The said John Millar called the said Laird of Killarnie and his officer *ut reos*, mentioning for the wrongous, masterful, and violent spoliation from him of the foresaid gear. The Lords discerned the said Laird and officer to have done wrong in the away-taking and withholding from the said John Millar his horse, sacks, and winnowing cloths; and

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A person finding another winnowing corn upon his ground, and having thereupon thrown the corn out of the sacks upon the sand, the Lords found this a wrong, but no spuilzie.

No. 2.

for sameikle as the said Laird alleged that he had really restored again to the said John the same, as good as they were at the time they were taken from him, and produced an instrument-public, where that a monk of Lindors offered really again to the said John the said horse and gear, as good as they were at the time they were taken from him, and that he refused to take the same again, and left them in his possession at his house; the said Lords found, that the said John was not obliged to take the said horse and goods again, which were but a part of the goods which were taken from him, for he wanted his shilling; and also found, that the instrument could not prove the value of the goods and the horse quia reus vel notarius non potest testificare nisi de eis quæ percipit sensu corporis, et valor rei indicio intellectus percipitur, et non sensu exteriori; and so, by the instrument, it was not proved the goods restored are so good as they were at the time they were taken by the title of poinding; absolved the said persons from spulzie thereof, and condemned him in wrong, and also condemned them in the wrongous casting down of the said shilling; albeit a great part of the Lords thought it spulzie, because the said shilling being upon the winnowing-cloths, and in the sacks, in the said John's possession, the said persons intromitted with the same, and cast the same down out of the sacks and cloths among the sand, and so put the said John from his possession, because he could not get it up clean again, and sik as it was before, because it was spilt, and mixed with the sand, and therethrough the said John was put from his possession, and spoiled thereof: Siklyk, if Titius came to me in the market-place, and cast down upon the high foul gait a load of meal out of my sack, or dung out the head of my puncheon of wine, and let it run all out, the said Titius videtur spoliare me de mea possessione predictarum rerum, for he violently intromitted therewith, and put me from possession, and I never recovered my possession again, nor might ever get the same again, et sic videor spoliatus esse mea possessione earundem rerum; and nevertheless pro majore parte concludebant uti prius, that it was a wrong, and no spulzie.

Fol. Dic. v. 2. p. 388. Sinclair MS. p. 21.

* * * Balfour reports this case :

GUDIS and geir, alledgit spuilzeit, and offerit again to the awner, or ony in his name, or to the ground quhairfra thay wer takin, aucht and sould be all and haill offerit; because ane offer beand maid of ony part thair of allanerlie, he to quhom the said offer is maid is not bund and oblist to ressave the samin, and, notwithstanding the said offer, the maker thair of may be callit for spuilzie of all and haill the saidis gudis and geir.

Balfour, No. 39. p. 475.