

* * Sinclair reports this case :

No 1.

IN the cause of John, Lord Hay of Yester, it was decreet, that a confession of party, made in the criminal court, taking him to the componitors for all the crimes imputed to him, proves not *in causa civili* the wrong, nor the profits of the alleged spuilzie, when the party in the said criminal action protests for the same, and so because the years of the alleged oppression and profits, confessed in the acts of adjournal by his party adversary, was not otherwise proved before the Sheriff. The said Lord produced an enrolment of Court, and was there said, had not been the said protestation, the said act containing in special the profits of the years had been just probation.

Sinclair, MS. p. 2.

1541. February 13.

The VICAR of KINGHORN *against* The LAIRD of SEAFIELD.

No 2.

Conviction in a criminal court held to be proof of violent intrusion in an action *ad civilem effectum*.

IN the Vicar of Kinghorn's cause against the Laird of Seafield, the LORDS found, by interlocutor, that the act of adjournal, where the Laird took him to his compositors for all crimes, the whilk Laird then protested for all his defence, as an instrument before the Lords shew, and albeit the said Laird was indicted for violent occupation of a part of the said Vicar's glebe, and holden waste on the other part, for the space of six years, and took then to his compositor upon the said crime *sub illa protestatione*; the said Lords decerned the act of adjournal sufficient proof of the deed and quantity, and so admitted the said Vicar to prove the said violent and waste-holding by the said space, and would not admit the said Laird to prove, that by the said space the said Vicar, by himself and his servants, occupied all the said kirkland and glebe, because that exception was direct contrary to the summons of the other party, and so the practice ought not to be admitted.

Ecl. Dic. v. 2. p. 350. Sinclair, MS. p. 10.

No 3.

Altho' the books of adjournal bore that the panel had confessed a spuilzie, this found no

1542. July 13. VICAR of KINGHORN *against* LAIRD of SEAFIELD.

THE LORDS absolved the Laird of Seafield from the wrongous and violent occupation of one half of the vicarage of Kinghorn's kirklands, and the waste of the other half, contained in the said Vicar's summons, raised against the said Laird upon an act of adjournal, in which was contained how the said Laird was indicted, came in the King's will, and found caution for satisfaction.

of party; because the said Laird in the justice ayre protested, that he might have all his defences in civil judgment, if any man afterwards pursued him for crimes, and because the confessions in such justice ayres are commonly made *ex justo metu*; and the said Vicar could not prove his allegiance before the Lords otherwise, albeit he had produced diverse witnesses to that effect before the Lords, therefore the LORDS absolved.

Fol. Dic. v. 2. p. 350. Sinclair, MS. p. 40.

No 3.
proof against
him *ad civilem*
effectum, as he
had reserved
by protest all
defences com-
petent before
a civil judge.

1552. November 16. HOME against SCOT.

IN the action pursued by Elizabeth Home, spouse to C. Cranston, against Scot of _____, for withholding from her the terce of the lands of _____, the space of seven years or thereby, according to the confession made in the act of adjournal raised thereupon, the said Scot said, that he should have absolvitor from certain years libelled, because the said lands were bruiked and holden waste by _____, in respect that he made protestation for the part of Elizabeth in the said justice ayre, for all his lawful defences. To which it was *replied* by the procurator of the said Elizabeth, That the said exception reserved all such defences as might stand with the concession made, likeas discharges, transactions, or such like, but not the defences, which were contrary to the confession. In respect of which reply, the exception was repelled.

Fol. Dic. v. 2. p. 350. Sinclair, MS. p. 114.

No 4.
In conformity
with No 2.
supra.

1583. February. EARL of ARRAN against CRAWFORD.

A PARTY, when pursued in a removing, having declared, That he was tenant not to the pursuer, but to a third party, he having been pursued in the same action thereafter at the instance of that same third party, the above judicial confession was found to prejudice him, and to make up the pursuer's title.

Fol. Dic. v. 2. p. 348. Colvil. Spottiswood.

No 5.

. This case is No 4. p. 13784, *voce* REMOVING.