

SECT. VI.

Colourable Title of Intromission.

A against B.

No. 39.

A PERSON being the King's donatar, and intromitting with escheat-goods *brevi manu* without declarator, this was found sufficient to liberate him *a spolio*. See APPENDIX.

Fol. Dic. v. 2. p. 390. Sinclair MS.

1543. February 21. EXECUTORS of a BASTARD against DOUGLAS.

No. 40.

ONE Douglas obtained the escheat of bastardy of a man, and the King's letters upon his gift to the Sheriff in that part, to cause him be answered of the said man's goods, and by virtue of these letters an officer and he past and took up all the man's goods and gear and insight. The man's executors asked for spuilzie, and showed how the man was rehabilitated by the King, and so the escheat was not. The Lords decerned and ordained reum in spolio, petito et actoris juramentum dandum de quantitate rerum licet reus habuerit titulum coloratum intromittendi, yet he ought not to have taken the goods and gear at his own hand, but should have called the possessors, and now his title reduced falsum fuisse ab initio.

Fol. Dic. v. 2. p. 391. Sinclair MS. p. 46.

* * Balfour reports this case :

Gif ony persoun obtenis the eschete of bastardrie, with the Lordis letteris, conform to his gift, to cause him be answerit conform thairto, and intromettis with the saidis gudis and geir alledgit pertening to the said umquhile bastard, he may be callit and convict for spuilzie thairto, at the instance of the said umquhile bastard's executouris, gif they sufficientlie preive that the bastard was rehabilitat befor his deceis ; because, albeit he had ane colourit titill, and the Lordis letteris, neverthe-

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 Commonty 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