

No. 4. to be kept to their profit having right thereto. The Lords by interlocutor repelled all the said exceptions, by reason of the libel and answers, and assigned to the Spaniard a day to prove his libel.

*Maitland MS. p. 110.*

1567. February 5.

LAIRD of CULTMALINDIE *against* LORD OLIPHANT.

No. 5.

Eating up growing corn, upon ground that had been common, but peaceably possessed by another as his property only for two years, found to infer spuilzie.

ANENT the action pursued by the Laird of Cultmalindie against Lord Oliphant, for wrongous eating and destroying, with horse, nolt, and other bestial, of certain corns tilled and sown by the said Laird and his tenants, upon their own proper ground, it was alleged by the said defender, That he did no wrong in eating of the said corn, because the ground whereupon these corns grew pertained to the said Lord Oliphant in common, by reason of an appointment made betwixt the said Lord's predecessors and the the said Laird's predecessors; and also it was alleged, That it was the first year of the riving out and sowing of the said corn, and so he did no wrong in defending his possession, he being in possession thereof from the time of the appointment to the time of the tilling thereof. It was alleged by the said pursuers, That they were in peaceable possession of the said ground as property, at least for the space of two years before the destruction of the said corn, by labouring, and tilling, and sowing of the said land and ground, in shearing, leading, and disponing of the corns that grew thereupon, for the space foresaid. It was alleged by the defender, That was not libelled, but allenarly tilling and sowing the corn alleged to be destroyed. It was alleged by the pursuer, That it was enough for him to libel for the spuilzie of the said corn, as said is; but because the defender alleged it to be the first year of the sowing, the said pursuer behoved to reply, and allege as above-written, because it resulted of the defender's allegiance. Which reply and libel of the pursuer was admitted to his probation by the Lords' interlocutor.

*Fol. Dic. v. 2. p. 388. Maitland MS. p. 181.*

1580. July 22. ————— *against* LORD SINCLAIR.

No. 6.

To what extent is restitution due?

THERE was a clerk in Dysart who pursued my Lord Sinclair for the violent ejecting him forth of a salt pan, which he had in feu and heritage from the said Lord; and he qualified his ejection in this sort, that the said Lord stopped the colliers who were hewing in the heugh coals for panwood to the pan, in so far as he compelled the said colliers to hew to himself, and compelled the leader who led to the clerk's pan to his own behoof, and so, through that unlake of wood, the said pan lay idle, wherefore he concluded in his libel the profits of the salt, albeit he was ejected forth of the winning of his coal. It was excepted against

the summons by my Lord Sinclair, That the summons was not relevant to infer any such ejection, and that because he qualified only the stoppers of the hewers and leaders of the coal, and compelled them to hew and lead to his own behoof, whereby he could not infer the profit of the salt, but, at the most, the coals that were spuilzied, et non potuit agere interdicto, Unde vi, quia versatus rebus mobilibus ablatis aut spoliatis; and the inconvenience appeared to be great, either for stopping of coals or away-taking, to infer ejection and interest to salt, and profits of a salt-pan, in respect he libelled not continual action, but he did the same at such a time; for albeit had stopped him at the time, he might have put in his colliers, and wrought in some other part; and if super unico actu vel diversis actibus, there ought to be such a continual ejection and interest of profits, 1000 or 1200 merks, as was libelled, but only the profits of the thing that was taken away—that was coal. To all this it was answered, That there was no inconveniency, and that it might stand both together to libel ejection, by stopping and compelling of his colliers, and also spoliation of coals, in uno libello; for it might stand, that a man might be ejected forth of his ground and possession, and also his gear taken away off the same ground at the same time; and as to the interest and profits of salt, the same ought to be refunded, because quod tam in actione bonorum raptorum et unde vi, sic restitutio cum omni causa damni; for if the pursuer had not been stopped in hewing and leading of his panwood, he would have carried the same to the pan, and converted the same in making of salt, et de jure tenetur is, vim qui intulit, restituere omnes fructus, quos dejectos percipere potuit, si dejectus non fuisset, et non solum fructuum habendus est usus sed utilitatem, L. 4. § 41. D. De vi et vi armata, et Cod Unde vi L. 4. The Lords by interlocutor found the summons relevant, and admitted the same to probation; nevertheless, reserved the modification of the profits to themselves, because immense petebat actor, and that there was some necessary expense to be deducted, as was the expense of winning the coal, and leading and carrying the same, and also the making of the salt.

*Calvil MS. p. 288.*

1581. *April.* DRUMMOND *against* FORREST.

MARGARET DRUMMOND, the relict of umquhile Robert Forest in \_\_\_\_\_, pursued Robert Forrest younger, her good-brother, to hear and see a decret given against her for spoliation of certain trees forth of the wood and lands of \_\_\_\_\_, pertaining to the said Robert in property and heritage, and to her as conjunct fiar. The reason of the reduction was, that she was convicted for spuilzie, which would be no direct action, in respect the said Robert was not in natural and real possession, et non potuit agere interdicto, Unde vi; and also, the spoliation being proved, it was refered to his oath as to the quantity et juramento

No. 6.

No. 7.

A life-renter in possession cannot be pursued for spuilzie in cutting the wood, but only for wrongous intromission et ad verum interesse actoris.