

## STEILBOW.

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1609. *November 4.*      **BOYD against RUSSEL.**

Goods let in steilbow to a tenant found to fall not under his escheat, but under the master's.

No. 1.

*Fol. Dic. v. 2. p. 393. Haddington MS.*

\* \* This case is No. 5. p. 5386 *voce* HEIRSHIP MOVEABLES.

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1624. *November 34.*      **TURNBULL against KER.**

The Lords, in an action of spuilzie of cattle, were of opinion, although it past not into an interlocutor, That steilbow goods being delivered by the master to his tenant at setting the room, might be poinded for the tenant's debt, and that the master would have only action against the tenant for the steilbow at the time appointed for re-delivery thereof, in respect that the said goods became really the tenant's own, seeing every year they were changed, and the first of them that were delivered by the master to the tenant, could not probably be extant, in respect of the alteration by the course of years, which alteration made them absolutely the tenant's own, and therefore subject to his debt.

No. 2.

*Fol. Dic. v. 2. p. 392. Duris.*

\* \* This case is No. 286. p. 11615. *voce* PRESUMPTION.

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1628. *December 6.*      **LAWSON against LAIRD of BOGHALL'S TENANTS.**

Steilbow goods in the tenants of a rebel's hands, being pursued for at the donatar's instance, in a special declarator, are decerned to pertain to the donatar of escheat; but the uplifting of them supersedes till the expiring of the tenant's tacks.

No. 3.

*Fol. Dic. v. 2. p. 393. Auchinleck MS. p. 64.*

No. 3.

\* \* Durie reports this case :

In a declarator of one Lawson, it was found, that a donatar to a rebel's escheat may, by special declarator, after the rebel's decease, seek the goods which were given in steilbow by the rebel to a tenant of his lands, and conditioned by the tenant to be rendered again at the ish and end of his said tack, to be declared to pertain to the said donatar ; which pursuit was sustained, albeit it was intended divers years before the ish of the tack, before which ish the tenant could not be pursued for delivery of the said goods ; seeing this action was only *declaratoria juris* ; and also found, that the said goods come under the compass of the rebel's escheat, and did thereby pertain to the donatar thereof, and pertained not to the heirs and executors of the rebel, albeit he was deceased before the ish of the tack.

Act. Stuart.

Clerk, Hay.

*Durie, p. 471.*

No. 4.

Where the tenant had no tack, he was ordained to deliver the steilbow to the donatar betwixt and Whitsunday, although he had received no warning to remove.

1637. July 18. VISCOUNT OF BELHAVEN *against* LADY LUSS.

The Viscount of Belhaven being donatar to the Laird of Luss' escheat, and obtaining declarator thereupon, pursues a special declarator against the Lady Luss, and certain others, wherein a tenant being called for delivery of certain steilbow goods, which were delivered to him by the Laird of Luss, the time when the room was set to him in steilbow, with the said goods ; and the defender alleging, that he could not be subject to deliver the same to the donatar, he being tenant of the room, so set in steilbow ; for he could not deliver the goods, and be compelled to keep the room, and to pay the yearly duty therefore, wanting the steilbow, which he obliged him to pay for the same, together with the steilbow ; the Lords found, that the defender ought to be compelled, by this process, to deliver the steilbow goods to the donatar, betwixt and the term of Whitsunday next to come, 1638, betwixt and which term he might provide himself of another room, and give over this room to the setter thereof to him, or to any other having right to the same, and that in the mean time he might make use of his corns, and provide for the delivery of the steilbow goods : And it was not respected, that the defender alleged, that he being tenant, closed within terms, as the heritor could not remove him before he were lawfully warned, as use is, no more could he pursue for the delivery of the steilbow goods, before he were warned, seeing he could not deliver the goods, which were the means by the which he laboured, and which are *pars fundi*, so conditioned to him, and consequently the donatar, who could not be in a better case than the master, who set the room, could not pursue for the goods, except he had been first warned to remove ; which allegiance was repelled, for the Lords found, that the defender ought to deliver the steilbow goods to the donatar, as having right thereto, at the next Whitsunday, after the separation of