

No 10. goods in the plough, would not infer restitution or spuilzie, but that the goods being stolen or strayed, might be recovered summarily.

Fol. Dic. v. 1. p. 115. Stair, v. 2. p. 750.

1672. December 6.

MR JOHN INNES *against* JOHN DOW.

No 11.
Lords, and
Baillies of re-
gality, having
right to the
escheat of
transgressors,
without being
accountable
to the King,
may *brevi
manu* intromit
with the es-
cheat goods
without a de-
clarator.

JOHN DOW having obtained a decret of spuilzie against Mr John Innes in absence, Mr John pursues reduction on this reason, that the decret was in absence upon a false or clandestine citation; and if he had compeared, he would have *alleged*, and now *alleges*, that the goods were lawfully pointed upon a decret of the regality of Spynie; whereby John Dow being accused of theft, was declared fugitive, and his goods ordained to be intromitted with, as belonging to the Lord or Bailie of the regality. It was *answered*, That the said decret could be no warrant for a summary intromission; for, when a party is declared fugitive before the Justices, there cannot be a summary intromission, neither doth the party's escheat fall till he be denounced, and a declarator of escheat be pursued thereupon, which ought to have been done in this case. It was *replied*, That the Lords and Baillies of regalities having right to the escheats of transgressors for their own behoof, without being countable to the King; their constant custom is, where a thief is declared fugitive, to intromit with his goods, as was done in this case.

THE LORDS found the reason relevant, and reduced the decret.

Fol. Dic. v. 1. p. 115. Stair, v. 2. p. 129.

1683. December 1.

THIN *against* SCOT.

No 12.
A miller was
found entitled
to seize corn
abstracted,
but not the
horse which
carried it.
See No 5.
p. 1815.

IN the action of spuilzie, Thin *contra* Scot, it being *alleged* for the defender, That he could not be liable for a spuilzie, either of the corns or horse libelled, because the pursuer was carrying away to another miln the said corns, which was a part of the thirle of his miln; and by a statute of King William,* and by several acts in the abbey court of Melrose, of whom this miln was holden, it was declared, That it should be lawful to seize upon the corns abstracted, or horse: THE LORDS sustained the defence as to the sacks of corn, and assoilzied the defender from restitution thereof; but as to the horse, restricted the same to wrongous intromission, and found them only liable for restitution of the price of the horse.

Fol. Dic. v. 1. p. 116. President Falconer, No 72. p. 48.

* See No 5. p. 1815.