

*leged absolvitor*, from any spuilzie of teinds, because, since the King's decret-arbital, and the fifteenth and seventeenth acts of Parliament 1633, spuilzie of teinds is taken away, especially by the said 15th act, the Parliament ratifies a former deed of the King's, declaring every heritor shall have the drawing of his own teind, and the benefit of a valuation; and, in the mean time, so long as the teinds are not valued, the heritors are only liable for the fifth of the rents in name of teind; *2dly*, By a contract betwixt the Town and the pursuer's father, the acres of Restalrig, lying runrig with these, are set for half a boll beer the acre, which is, by the contract, declared to be the just and true rate and value thereof, which, by necessary consequence, declares the value of the teinds now in question, being runrig with the other. The pursuer *answered* to the *first*, That the foresaid act of Parliament was only meant in relation to the King's annuity; and albeit the foresaid clause therein be general, yet it is clear by the 17th act, which is posterior, that the first part shall be the teind, after the valuation duly led, which hath been constantly allowed, by custom of the Commission of Plantations, which gave only warrant to heritors to lead their own teind during the dependence of a valuation, and therefore spuilzies of teinds have been frequently sustained since the said acts. As to the *second*, Whatever be the way of conception of the tack, for the other acres not in question, though it did acknowledge the same to be the just value thereof, yet it cannot extend to other teinds; seeing where the parties agree in the matter, they are not solicitous for the conception of the words, which cannot be drawn in consequence to any other matter.

THE LORDS repelled both these defences, but declared they would not sustain spuilzie, as to the oath *in litem*, but admitted the value of the teind to the pursuer's probation; reserving to themselves the modification of the prices, if they should be exorbitantly proved, but not of the quantities.

*Fol. Dic. v. 2. p. 9. Stair, v. 1. p. 150.*

1706. February 21.

ELIZABETH HENDERSON, Relict of JAMES ROSS, Stabler in Edinburgh,  
*against* MR ARCHIBALD DUNBAR of Thundertoun.

MR ARCHIBALD DUNBAR of Thundertoun having obtained a decret of forthcoming before the Sheriffs of Edinburgh, against a person under the general designation of Mrs Ross, indweller in Edinburgh, and thereupon having pointed from Elizabeth Henderson, relict of James Ross, stabler there, as being a Mrs Ross, her pewter vessel, and other kitchen furniture; she raised a summons of reduction of the said decret, containing a conclusion of spuilzie and damages against Thundertoun; and the decret being reduced as null upon this head, that it was pronounced against a person not particularly designed by name o

No 4.

Oath *in litem*;  
see acts 15th  
and 17th Par.  
1633.

No 5.

Oath *in litem*  
allowed to  
the pursuer  
of a spuilzie  
of kitchen  
furniture,  
which had  
been pointed  
by mistake  
for the goods  
of another  
person of the  
same name.

No 5.

surname, or any relative designation of parent, husband, or the like, that could demonstrate the party, but only designed Mrs Ross, indweller in Edinburgh, and others fell under that general designation; the pursuer insisted in her conclusion of spuilzie, which she offered to prove, and craved her oath *in litem* might be taken as to the quantities and prices of the goods spuilzied.

THE LORDS allowed to the pursuer the benefit of her oath *in litem*, not so much for violent profits, the goods taken away by their nature yielding no product, as for damages in her employment of affording entertainment and stabling to strangers, which was prejudged by the spuilzie of her household furniture.

*Fol. Dic. v. 2. p. 9. Forbes, p. 107.*

\* \* \* Fountainhall reports this case :

1706. February 22.—ELIZABETH HENDERSON, relict of James Ross, stabler in Edinburgh, pursues Dunbar of Thundertoun in a spuilzie, in so far as he, as tacksman of the Excise, having obtained a decret against John Ross, brewer in Edinburgh, for L. 1000; he arrests in the hands of one Mrs Ross, as his debtor, and takes out a decret against her, under that general designation, and then sends to the house of this Mrs Ross, and poinds her pewter vessels, and other goods; who not being the person in whose hands the arrestment was laid, raises a reduction and spuilzie; and he offering to prove by her oath, that she was the same individual person, she deponed negative, and then insisted in her spuilzie, which the LORDS sustained, and gave her the benefit of her oath *in litem*, not so much for violent profits, these sort of goods having no product, as for her damages.

*Fountainhall, v. 2. p. 331.*

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S E C T. III.

If sustained against the Delinquent's Cautioners.

1683. November 6.

MR GIDEON SCHAW, Bookseller, *against* MR JOHN WANSE, Keeper of the Tolbooth of Edinburgh.

No 6.  
A thief having declared under his hand, that he

LORD BLAIR, probationer, reported the case pursued by Gideon Schaw, bookseller, *contra* Mr John Wanse, keeper of the tolbooth of Edinburgh, and the