

Criegie belonged to the lands contained in the said disposition ; and she contended, That although no such right had been produced, yet her possession by itself was a sufficient title, without shewing any right of disposition or infestment ; and she offered to prove her constant yearly possession since the time of her husband's decease in the year 1712.

It was replied for Criegie, That though in moveables possession presumed property, yet that did not hold in the right of lands, unless an infestment was produced ; for sasines are become so necessary a solemnity, that none can properly be said to possess real rights without them.

Duplied for the pursuer, That right and possession, whether of heritage or moveables, were in law things of a different nature, and had quite different effects : Possession is a right and title of itself, and where it has been lawfully attained, the possessor is as much entitled to be maintained in his possession, as any other person having the most unquestionable right ; and in the present case the pursuer's possession must be presumed lawfully attained, both from the disposition produced and her peaceable possession for so long a time.

The Lords found, That the pursuer being in the peaceable possession, without any interruption from the defender before the year 1723, she is entitled to carry on her action of spuilzie.

Cited for the Pursuer, Stair's Institutions, B. 1. T. 9. and B. 4. T. 24. ; No. 4. p. 3607. and No. 17. p. 10511.

For the Defender, Maxywell against Ferguson, *June 25. 1673.* No. 17. p. 10628. *voce* POSSESSORY JUDGMENT.

Act. *Graham, sen.* Alt. *Dalrymple, sen.* Reporter, *Lord Milton.* Clerk *Mackenzie.*

Fol. Dic. v. 4. p. 298. Edgar, p. 76.

No. 21.
feftmeot, was
found to have
right to pursue
a spuilzie
against the
granter of the
disposition
who carried
off her peats.

SECT. III.

To whom the Action is Competent.

1549. February 19. LAIRD of DURIE against STEPHEN DUDDINGSTON.

No. 22.

If a tenant or possessor of any room set to him with steelbow goods being ejected or spuilzied of his possession or goods, the action of spuilzie concerning the possession and restitution thereof pertains to the said tenant's master, but the action of spuilzie concerning the steelbow goods pertains to the said tenant allenary,

No. 22. because the same is his own by nature of the contract of steelbow, and was in his possession, and not in his master's.

Fol. Dic. v. 2. p. 389. Balfour, p. 468.

* * * Sinclair reports this case :

IN a cause of spuilzie intended by the Laird of Durie against Stephen Duddingston, the Lords decreted Stephen to have spuilzied him of his possession of the lands of ———, because Stephen violently put A. who was tacksman and tenant to the said Laird, off the said lands ; and that the Laird was in possession thereof by his said tenant, and spuilzied of his possession ; because his tenant, who bruik-ed the lands in the Laird's name, was violently put from the lands, he ought to be restored to the said possession in the person of his tenant ; but *quia* the goods and gear that were upon the ground foresaid, and spuilzied thereoff by the said Stephen were delivered by the said Laird of Dury to his said tenant and steelbow, and so were the tenant's own by nature of the contract of steelbow. The Lords decerned Stephen quit, because these goods pertained to the tenant, and were his own and in his possession, and not in his master's, and so *actio spolii bonorum pertinet tenenti et non domino.*

Sinclair MS. p. 87.

1613. June 17.

DOUGLAS against YOUNG.

No. 23.

IN an action of reduction of a decret of ejection and spuilzie pursued by Mr. John Douglas against Adam Young, the Lords found that a discharge granted to one Adam Lundie of the actions of ejection and spuilzie, without any mention of sums of money paid therefore, was not relevant to infer liberation *aliis debendi*. Thereafter it was replied in fortification of the reason founded upon the discharge of the sum, &c. which reply the Lords found relevant, notwithstanding that the discharge was made with this express reservation, viz. without prejudice of his action against the rest of the persons convened, and also notwithstanding of the tenor of the discharge, which bears the one express clause, and makes no mention of sums paid ; and likewise the Lords found this reply probable by witnesses, notwithstanding the same was direct contrary to the writ, but they declare the witnesses shall be examined in their own presence.

Kerse MS. Fol. 197.