

1541. *March 13.* SIR JOHN GREENWALLS *against* JAMES LAWSON.

In Sir John Greenwalls' cause, for spuilzie of his teind sheaves, against James Lawson of Humbie, the Lords decerned a day to the said James to call his warrant from Mr. George Hay, factor to Mr. Robert Wauchope, of the said vicarage, then pertaining to the said Mr. Robert, and now to the said Sir John, by resignation made thereof in favours of him by the said Mr. Robert; because the said James was in possession of the said teind-sheaves by virtue of tack made to him by the said Mr. George, as factor foresaid, and whereof were yet certain years to run; and the said Mr. George obliged him to warrant the said teind-sheaves to the said James, for the years contained in the libel; and therefore gave him a day to call his said warrant; albeit Mr. Andrew Blackstock, procurator for the said Sir John, alleged, that wrong had no warrant, and therefore no day should be given to the said James to the effect foresaid: Nevertheless the Lords decerned as said is; and that of the practique, whenever a man is in possession *cum titulo* for terms to run, and another call him for wrong, in occupying that gear or land, reus debet habere diem ad verandum warrantum suum, for that it is not kend for wrong or spuilzie; and the man that I allege my warrant may have good defences, unknown unto me.

*Fol. Dic. v. 2. p. 392. Sinclair MS. p. 16.*

1543. *June 25.* CRICHTON *against* TENANT.

John Tenant was called for a spuilzie of Mr. William Crichton out of the Monkrow, beside Falkirk. He alleged he had tack thereof of my Lord Dunkeld, and he was entered thereto by his precept, orderly, and so asked a day to call his warrant. In this case, *quia de jure regni Scotiae*, wrong has no warrant, the Lords by interlocutor decerned him to have no day to call his warrant.

*Fol. Dic. v. 2. p. 392. Sinclair MS. p. 52.*

1586. *April.* LADY MARR *against* EARL of GLENCAIRN.

The Lady Marr, Dame Annabel Murray, pursued the Earl of Glencairn for the spoliation of the hail goods and gear, both inside plenishing and jewels, that were in the Place of Erskine, intromitted, spuilzied, and taken away by the said Earl and his accomplices. It was answered by the Earl, That he had committed no spuilzie, because he intromitted by command of the King's Majesty; and for that produced a missive writing, direct from the King's Majesty to him, to take the Place of Erskine, and to intromit with the gear in the same; the Earl of Marr then being one of the rebels who enterprised the Castle of Stirling; and also

No. 68.

A defender was allowed to call his warrant in a spuilzie of teind, where he had a tack, and was in possession.

No. 69.

No. 70.

Nether the King's private letter, nor even a commission from the Privy Council, can warrant a spuilzie.

No. 70.

produced a commission given by advice of the Secret Council, to the same effect and purpose, et de jure quæ principi placent legis habet vigorem; et Lucius D. De empti: Si res vendita ablata sit autoritate principis, venditori non nocet, et quod quis mandato judicis facit, dolo facere non videtur, cum habeat necessitatem parere de regni jure; and certain practicks and acts of Parliament were produced, to make for them that had intromitted with other folk's places and gear, by virtue of commission. Against all this it was alleged, That all the writings and commissions were impetrated tacita veritate et ad suggestionem partis; and the meaning of the law anent parendi necessitatem et quæ debentur principi et judici in rebus solum civibus, nam privatis personis licitum est resistere, si contra juris formam aliquid fiat a judice aut a principe aut a fisco, ut in L. 5. et 7. Cod De jure fisci; and as to practicks, there were practicks in recent memory contrary to the same. The Lords repelled the exception, and admitted the libel to probation, notwithstanding of the same.

In the same cause, it was alleged by the Earl, That the said Lady had intromitted again with a good part of the gear that was alleged to be spuilzied, and so had purged the hail spuilzie. The Lords admitted the exception to purge the spulzie pro tanto; and some of the Lords were of opinion, according to the ancient practice, that the allegiance was not relevant, except the defender would have qualified the same to have been done incontinenter and infra triduum.

*Fol. Dic. v. 2. p. 392. Colvil MS. p. 406.*

1608. December 10.

GLEN against SETOUN.

No. 71.

It was no excuse to a son committing a spuilzie, that he had the orders of his father.

Mr. Robert Glen pursued Setoun, son to umquhile John Setoun of Pittredie, for wrongous intromission with the teind-sheaves of the said umquhile John's lands, pertaining in tack to the said Mr. Robert in anno 1597, 1598, &c. It was alleged by the defender, That no action should be given against him, because if any meddling he had with these corns, it was as a servant to his father, he being then a minor, of 15 years of age, *in domo et potestate patris*, and at his command. It was replied, That the pursuer having served inhibition, this defender, and all others, were *in mala fide* to have meddled with any of these corns unteinded. The matter being reasoned amongst the Lords, some alleged, for the defender, that a man's bairns and servants being commanded, in harvest, to lead the master's corns, sown by himself, albeit they be both stock and teind, to his barn-yard, without any farther intromission to their own behoof, they were *in bona fide*, and *habebant parendi necessitatem*, and could not be in danger of law as if they had meddled with any other man's corns, growing upon any other ground; and if it were found otherwise, household servants and bairns might be wraiked and snared in great inconveniencies. It was answered, That the inhibition put *omnes mortales in mala fide*, and that wrong had no warrant; so that whoever was at a spuilzie, whether son or servant, might be pursued *suher proprio facto*; and if it were found