

No. 33. the offer, keepled, detained, and used him at his pleasure ; in respect whereof the Lords repelled the exception.

*Fol. Dic. v. 2. p. 390. Haddington MS. No. 1729.*

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1616. February 8. GIBB *against* DOBY.

No. 34.

IN an action of spuilzie pursued by John Gibb *contra* ——— Doby in Kirkcaldy, the Lords found an exception upon a lawful poinding, which was not used at the market cross, relevant with this eik, that the defender offered to re-deliver the goods poinded within the space of a month in as good a state as they were.

*Kerse MS. p. 198.*

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1611. February 23. KNOWS *against* LEARMONTH.

No. 35.

Restitution, even within an hour, not relevant, unless made *cum omni causa*.

ROBERT KNOWS, indweller in the Water of Leith, pursues Joseph Learmonth, baxter in Edinburgh, for spoliation of a horse. Alleged no spuilzie, because within one hour after, the defender restored the horse to the pursuer's man, from whom he is alleged to have spuilzied him, and so cannot be called as a spuilzier, especially seeing the pursuer and his horse were bound in service to the baxters of Edinburgh for carrying of their loads and stuff between Edinburgh and the common mills, of which bakers the defender is one, and so he might intromit, and he did restore. Replied, Ought to be repelled in respect of the violent spoliation and away taking libelled, and, for the offer made of restitution, non-relevant, except it were said *cum omni causa*, which he cannot say, because he offers to prove, that before the offer to restore, his back was broken with the weight of a burden laid on by the defender. Did admit the reply and summons.

*Learmonth, Sharp, & M<sup>c</sup>Gill.*

*Fol. Dic. v. 2. p. 390. Nicolson MS. p. 394.*

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1624. March 3. LESLIE *against* INGLIS.

No. 36.

ALLEGED for one of the two defenders : He poinded the horse from the pursuer, on a sentence, upon the ground ; and while he was taking him to Cupar, where he put him in a stable, and offered him corns and straw, he refused, and rammaged to death :—Finds the allegiance relevant.

Clerk, *Durie.*

*Fol. Dic. v. 2. p. 390. Nicolson MS. No. 588. p. 400.*