

No 261. the act of parliament ought to be understood according to the words, *quæ sunt* all actions of spulzie and of the like nature, behoved to be interpreted *ubi juratur in litem*. THE LORDS found, that the party might pursue for wrongous intromission, upon the inhibition, notwithstanding of the act.

*Fol. Dic. v. 2. p. 118. Colvil, MS. p. 420.*

1610. February 2. CRAIGHALL against KINNINMONTH.

No 262.

INTRUSION not pursued within three years, expires and prescribes, as well as actions, especially if any greater profits be libelled nor the ordinary mails and services, in respect of the act of Parliament anent prescription in spuilzies, actions, and others of that nature.

*Fol. Dic. v. 2. p. 119. Haddington, MS. No 1778.*

1610. July 18. CORBET against VANS.

No 263.

AN action pursued for demolishing a mill, and thereby withholding the profits thereof, extending to 4 bolls victual daily, together with the materials, extending to 5000 merks, found to be prescribed by the act of Parliament of prescription of spuilzies, actions, and causes of that nature.

*Fol. Dic. v. 2. p. 119. Haddington, MS. No 1972.*

1624. February 25. DUNMUIR against PAYWEELL.

No 264.

A spuilzie having been restricted to wrongous intromission, because not pursued within the three years; the Lords refused to allow any profits, whether ordinary or violent; and found that the pursuer could seek only *ipsa corpora*.

IN an action of spuilziation of certain sheep pursued by Dunmuir, flesher in Edinburgh, against one called Payweell, which action was restricted to wrongous intromission, and the spuilzie past from, because it was not pursued within three years; the LORDS found, That no profits ought to be granted in actions of wrongous intromission, neither ordinary nor violent profits; and that in such actions the pursuer had right only to pursue, and seek *ipsa corpora*, without profits, albeit he contended that the wrongous intromission gave him right to seek the ordinary profits; for though he passed from the spuilzie, which he behoved to do for not pursuing the same within the time appointed by the act of Parliament, yet that never purged the wrong done to him by the defender, but took only away from him that privilege of *juramentum in litem*, which he had, if the spuilzie had been sustained; but in all other consequences, he alleged that his action stood good to him for the profits of so many goods as should be proved

were intromitted with by the defender; which reply was not sustained, nor action granted for the profits.

No 264.

Act. *Nicolson* younger.Alt. *Russel*.Clerk, *Gibson*.*Fol. Dic. v. 2. p. 118. Durie, p. 113.*1627. *March 16.*HAY *against* KER.

AN ejection being pursued by Walter Hay *contra* Mark Ker, and the action, in so far as was pursued by ejection, being elided by the act of Parliament 1579, anent prescription, because it was not pursued within 3 years after the deed libelled; the LORDS nevertheless sustained the action for restoring of the pursuer to the possession of the land, and for payment of the ordinary duty to him which he was in use to receive from the tenants of the lands the years before the ejection, and of all the years since the defender entered to the lands; and so the pursuer passing from the pursuit, so far as concerned any violent deed of ejection, or higher profits of the lands, and converting the same to an intrusion in the pursuer's possession, and pursuit for the ordinary duties there-through for years bygone, and restoring of the possession of the ground thereafter, the action was sustained. (See PROCESS.)

No 265.

An action of ejection sustained, after three years, to the effect of restoring to possession, and for payment of the ordinary rent during the defender's possession.

Act. *Hope & Lermouth*.Alt. *Nicolson & Ayton*.Clerk, *Scot*.*Fol. Dic. v. 2. p. 118. Durie, p. 292.*1631. *July 26.*MAXWELL *against* L. EARLSTOUN.

ALEXANDER MAXWELL, as assignee to Katharine Glendinning, pursuing umquhile Gordon of Earlstoun, in the year 1626, for intromitting with certain sheep pertaining to the cedent, the intromission being *in anno* 1604, and the pursuit not intended till 1626, as said is, and the defender being dead, the action is transferred in his son and heir, and the profit of the goods was also craved since his father's intromission. In which action (being a wrongous intromission, and wherein no spuilzie was craved, nor could be, not being pursued *debito tempore* within three years), the LORDS found, That no profits could be granted, and that the pursuer in wrongous intromission had no action therefor; but declared that they would consider of the parties' interest at the advising of the procees, after probation deduced and renounced.

No 266.

Found in conformity to Dunmuir against Payweel, No 264. p. 11068.

Act. *Cunningham*.Alt. *Nicolson, Mowat, & Gilmore*.Clerk, *Scot*.*Fol. Dic. v. 2. p. 118. Durie, p. 601.*