

titution; and if the relict had been pursued, she would have had retention of her third, which will exceed the worth of the goods poided, and so they may be esteemed her proper goods, seeing she was in possession at the time, and 40 days before the working, useing, milking, and keeping them as her own; and the time of the poiding, none compeared to make faith that they were theirs; and the farthest that can be craved is restitution. Repels the allegiance and duply, in respect of the reply and summons, and possession therein qualified, but reserves the modification of the violent profits to the Lords.

Clerk, *Hay*.

Fol. Dic. v. 2. p. 389. Nicolson MS. No. 173. p. 123.

No. 18.

1626 July 26.

RUSSEL *against* L. KERSE.

IN an action of spuilzie pursued at the instance of one Janet Russel against the Laird of Kerse, who was convened for spuilzie of corns growing upon the lands libelled; and the spuilzie libelled to be committed in January 1624, and the corns being of the growth of the crop, 1623; the husband of this pursuer, who sowed the corns of this crop, dying in September 1623, before the spuilzie; whereby the defender alledged, that the corns of that crop, alledged spuilzied from the pursuer, behoved to pertain to her husband, who was his tenant of the lands, and sowed that crop and corns, he dying in September that same year as said is, at which time the corns were separated from the ground, and shorn by the defunct, and therefore until his testament were confirmed, the relict could not pursue for the corns alleged pertaining to her, for the same would pertain to his executor, who behoved to be answerable to this defender, for the farms of the lands addebt. by the defunct. This allegiance was repelled, and the action sustained at the relict's instance, without necessity of confirmation, in respect of her possession libelled continually to the time of the spuilzie. Item in this same cause, an exception was proponed upon the comprising of the corns by the birle-men, with consent of the pursuer, and delivery of the same to this defender, for satisfying of his farms owing to him by consent also of the pursuer; which exception was also found relevant, and admitted to the pursuer's probation, which the Lords found relevant to be proved in all the heads thereof, especially anent the pursuer's consent by witnesses, and found no necessity, that her consent should be proved by her oath or writ.

Fol. Dic. v. 2. p. 389. Durie, p. 227.

No. 19.

Spuilzie of corn sustained, at the instance of a relict, against the landlord, though without confirmation, and her husband had died after the corn was separated.

1629 July 7.

LADY RENTON *against* Her SON.

The Lady upon a sasine of the lands of Horslie, *cum decimis inclusis*, pursuing her son for spuilzie of the saids teinds *anno* 1628, and the defender alledging, that he

No. 20.
Spuilzie of teinds.