

No. 15.

1628. *March 21.* MURRAY *against* INTROMMITTERS with TEINDS.

Found, That tenants might pay to their master, who had, for a certain rent, let the lands, with the teinds; even after citation, at the instance of the titular; for they could not know what part of the rent to retain for teind.

Durie.

\* \* \* This case is No. 6. p. 1780. *vide* BONA FIDE PAYMENT.

No. 16.  
Liability for  
spuilzie.

1629. *July 17.* MORESTON and CRAIG *against* DOUGLAS.

Umquhile William Douglas, being donatar to John Stuart's escheat and life-rent, and having obtained general declarator thereupon, served inhibition upon the teinds of Ednam and Mellerstains, *anno* 1621, 1622, &c. After his decease, Moreston and Mr. Robert Craig, executors dative, decerned to the said William, pursued, by way of special declarator, the Laird of Ednam, as heir, at least lawfully charged to enter heir, to his father, to see and hear him decerned to restore to them the teinds which grew upon the said lands the years libelled, or otherwise the prices. Alleged, *1mo*, No process upon the summons pursued by them as executors to William Douglas, until the gift and general declarator thereupon obtained by William Douglas were transferred in their persons as executors decerned, which general declarator is the ground of this pursuit. Replied, That ought to be repelled, in respect it is only a general declarator, which needs not to be transferred, there being no sentence recovered against the debtors, nor any special declarator. The Lords repelled this allegation.

*2do*, Alleged, The defender could not be convened, as lawfully charged to enter heir to his father, for a spuilzie committed by his father, whereupon there was no sentence recovered against his father in his own time. The Lords repelled this allegation likewise.

*3tio*, Alleged, No process, till John Stuart's sasine be produced, seeing it was the pursuer's title. The Lords sustained it to be produced *cum processu. Quod notandum.* Afterwards, the defender offered to renounce, and took a day for that effect; the pursuer craved that he might have the same day to prove his summons against him *cognitionis causa*, if he renounced, or otherwise, if he renounced not, that execution might follow thereon. The Lords granted it, and would not pre-judge the pursuer of a term, by letting the cause lie over till the defender renounced or not.

*Spottiswood, p. 334.*