

1665. *January 27.*LAIRDS OF BERFOORD AND BINSTOUN *against* LORD KINGSTOUN.

BERFOORD and BINSTOUN pursue the Lord Kingstoun for spuilzie of certain corns; he alleged absolutor, because he legally drew the same, as their teind, by virtue of his tack, from the present minister, and inhibition thereon. It was *answered*, 1st, That was not sufficient summarily to draw the defender's teinds, unless there had been a sentence on the inhibition, which is but a warning, and so must not infer removing, *brevi manu ad vitandum tumultum*. 2dly, If he had legally pursued them for a spuilzie, they would have alleged, and now allege, that they have tacks standing from the minister for the time, who, though deposed, yet lives; and all incumbents' tacks serve during their natural life, and no tack from the next incumbent prejudices during the life of the former, conform to an express act of Parliament.—The defender *duplied*, That albeit an act of Parliament required removing not to be summarily in lands, it did not so in teinds. 2dly, The pursuer's tacks are null without consent of the patron. The pursuer *triplied*, That they are standing cled with seven years possession, and their tacks are subscribed by the patron. *Quadruplied*, he was not then patron, but was standing fore-faulted unrestored. *Quintuplied*, It is sufficient *coloratus titulus cum possessione*, till the reduction; and the Lord Bothwell's son, patron, was after restored, whereby it revived.

THE LORDS repelled the defence, in respect of the pursuer's tacks, and found the defender might not *brevi manu* intromit, there being any pretence of title; but they desired the pursuer to restrict to wrongous intromission, and without oath *in litem*. See SPUILZIE.

*Fol. Dic. v. I. p. 115. Stair, v. I. p. 257.*

1667. *January 3.*— *against* BRAND.

— CHAPMAN having left his pack in custody with Brand, in Dundee; about ten or twelve days after, Brand opened the pack, and made use of the ware. The Chapman now pursues him for a spuilzie; who alleges absolutor, because the pack was put in his hands for security of a debt due by the packman, and he being informed that the packman would not return, did, by warrant of a Bailie in Dundee, cause four of the neighbours inventory and price the ware.—It was *answered*, *Non relevat*, for though the pack had been impignorate, the defender could not apprise it summarily, but behoved to take a sentence to poind the same.

THE LORDS repelled the defence.

It was further *alleged*, That there could be no spuilzie, nor oath *in litem* of the pursuer, because there was no violence.—It was *answered*, That the oath

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No 7.

A person having right to teinds, and using inhibition thereon, cannot turn out the possessor *brevi manu*, if he has any pretence of right.

No 8.

A pedlar left his pack in pledge. The creditor, by warrant of a Judge, got the goods valued and sold. This found irregular. They ought to have been poinded.