

1629. February 25. WATSON against DICK.

No. 9.

IN action of spuilzie of household gear, *et in aliis inanimatis*, the Lords will not sustain the libel for profit; but, after probation, will have consideration of their damage and interest.

Auchinleck MS. p. 217.

1676. July 25. MAXWEL against MAXWELS.

No. 10.

RACHEL MAXWEL pursues Mr. Hugh Maxwel and his wife for a spuilzie, and breaking up some chests and coffers, and taking out webs of linen and others which were in Rachel's possession. The defender alleged *non relevat*, by having of the keys, to infer possession, that being competent to children and servants in families; and the pursuer was in her father's family, and the goods must be presumed to belong to her father, and so to Mr. Hugh, as having right from a donatar his escheat after declarator.

Spuilzie of goods in coffers was sustained by the party having the key, and breaking up the coffers.

The Lords repelled the defence, and sustained process, seeing the meddling with the goods was not by parents; and that the having of the keys was sufficient possession against any others but parents and masters.

Stair, v. 2. p. 458.

1678. November 29. MORE against M^cPHADERICK.

No. 11.

MORE pursues M^cPhaderick for spuilzieing of certain cows; who alleged, Absolvitor, because he offered him to prove, that the pursuer had stole as many from him, or stole or reset his; and therefore he might lawfully take as many of the pursuer's by the Act 112. Parl. 7. & Act. 16. Parl. 10. K. Ja. VI.

Spuilzie not elided by the defender alleging that the pursuer had taken as much from him.

The Lords found the defence not relevant, unless it were proponed in the terms of these acts, viz. "That the pursuer was a broken man, and a notorious thief, of any clan or combination that could not be reached by the ordinary course of law.

Stair, v. 2. p. 649.

1715. June 14. DONALD DOUNIE and Others against GRAHAM of Drynie.

No. 12.

THE said Dounie and three other fishers, being tenants in some acres of land to Drynie, for which they paid a small silver duty; but he had the teind of all the fishes they brought on his ground, besides some other casualties, such as carriages, &c.—they at Witsunday 1712, do all suddenly remove from their pos-

Unwarrantable intrusion infers spuilzie.

No. 13. sessions, and carry off with them their plenishing, &c. leaving only the crop upon the ground ; but in harvest thereafter sent and made offer to him under form of instrument of their year's money rent, and caution for all other debts which he should verify against them, and thereupon required liberty to cut down their corns, which Drynie refused ; whereupon their procurator protested against him for damages, if he should hinder or divert them from shearing or ingathering their corns, at any time after the date of the instrument. Notwithstanding whereof, Drynie caused shear and inbring the corn ; whereupon a process of spuilzie being intended at the tenant's instance ;

It was answered for the defender, *1mo*. That action of spuilzie is only competent to the natural possessor ; but in this case the corns were deserted by the possessors, and left open to the defender's possession. And it is observed by the Lord Stair, B. 1. T. 9. § 19. That a spuilzie of corns was elided by the defender's entering to the possession of the ground whereupon the corns were growing ; Elliot *contra* The Lord of Buccleugh. Sect 7. *infra*. And is also observed by Durie, in a case betwixt Alison and Traill, No. 9. p. 14728. That a defender being convened for a spuilzie of certain of the pursuer's goods, which were libelled to be in the defender's own house, the Lords found no action of spuilzie could be sustained for the goods libelled to have been in the defender's house, albeit the same pertained to the pursuer. *2do*, That what he did, was for preserving his right of hypotheque.

To all which the pursuer's opponed the above instrument, wherein offer was made of payment of the silver, and caution for other things which were indefinite ; and therefore concluded, that debarring by actual shearing of the corns, and entering to the possession, was in itself a spuilzie.

The Lords found the defender's intronission with the goods libelled, belonging to the pursuers, was illegal and unwarrantable, and inferred a spuilzie, &c.

Alt. Boswel.

Clerk, *Sir James Justice.*

Bruce, v. 1. No. 197. p. 119.

SECT. II.

What Title requisite to found an Action of Spulzie.

1541. *November 18.* OGIHVIE *against* RESTALRIG.

No. 13.

IN causa spolii intentata contra Dominum de Restalrig per Walterum Ogilvie de ——— interlocuti sunt domini, quod ipse actor Walterus de proprietate suarum terrarum de quarum spoliatione hic agebat, non tenebatur dicere ex eo quod