

* * Sinclair reports this case :

No. 16.

Dominus Merchiston et Jacobus Carmichael contra Dominum de Wrights-houses, It was alleged, that the actor might not pursue the spuilzie of the hail lands let, because his summons bore that he was in possession of a part of the same, by putting thereof upon his sleds, and so that he had no possession of the whole. The Lords, by their interlocutor, decerned, That by the apprehension of a part of the lands "actores erant in possessione totarum decemarum et de spoliatione totarum potest agere, quemadmodum per apprehensionem unius partis fundi apprehendi censetur possessio totius fundi quantum cunque magni."

Sinclair MS. p. 80.

No. 17.

1781. *March.* LAIRD OF GADZEARD *against* The YOUNG SHERIFF OF AYR.

The Laird of Gadzeard pursued the young Sheriff of Ayr for spoliation of certain goods, and for the demolishing of a new mill, alleging him to be heritably infest in the said mill. He was desired by the Sheriff to instruct his summons, and to produce his title where he was heritably infest. He answered, that he mistered not, for in spoliation it was enough to him to allege possession without a title, and it would come thereafter *in terminis probatorio*; the which allegiance the Lords found relevant, and found that he mistered not to produce his titles.

Fol. Dic. v. 2. p. 389. Colvil MS. p. 323.

1619. *July 14.*

DOUGLAS *against* M'CUBIN.

No. 18.

An executor may pursue spuilzie of the defunct's goods, altho' spuilzied before confirmation of the testament, and consequently before the executor obtained possession.

DOUGLAS, assignee by Cuthbert M'Cubin, executor dative of umquhile Robert M'Cubin to certain grounds confirmed, and the cedent for his interest, pursues spuilzie. Alleged, he cannot allege possession nor right to the goods the time of the spuilziation, because the eight kine were pointed by a sentence against M'Cubin and the defunct, her last spouse, for his interest; and the goods were possessed by umquhile Alexander M'Cubin, her first spouse, and by her in her widowhood, and by her and the defunct her last spouse, till his decease, as their own proper goods, upon the ground of Blackcraig, whereof Alison and her spouse were tenants; likewise she possessed them as her own after the defunct's decease, to the time of the pointing, neither ever had the pursuer right or possession of the lands of Blackcraig. Replied, They could not have been pointed from her after her husband's decease, because they fell under his testament; and farther, oppones the summons, they bearing that they pertained to the executor, and was in possession in an——. Duplied, The executor had no right at the time of the pointing, in May, not being confirmed executor till July, and he would not have recovered the possession but by a pursuit, and so cannot seek spuilziation, but res-