

proprio motu. Surety for the Deceit differs from Surety for the good Behavior, or de se bene gerende, in that, the latter includes the former, and something more. A Person guilty of any particular Breach of the Peace against another, liable to commit it, may be required to give Surety for keeping the Peace with him. Whereas ^{note} by habitual Misbehavior, may be bound to the good Behavior toward all Persons both in Words, Gestures and Actions. But this Matter handled more fully in my second Volume Part 3. Lib. 3. Chap. 8. Tit. 1. Part 2. Lib. 3. Chap. 2. Tit. 7.

Tit. 4. of Spuileze.

A Spuileze is the taking away one's Movables without Order of Law or Consent of the Owner. Whereof a summons runs thus: George by the grace of God, to our Lordes &c. our Will &c and we charge you that ye faithfully & true warn and charge our Deender to compair and answer at the Justices the Sheriff against whom the Spuileze for specified was committed. That is to say, that the Deender for his Masterfull wrongous and violent coming by himself and his servants Complices and others in his Name, of his causing sending sounding out command Prejct Assistance and Ratchabition to the Lands of &c. upon the Sec. Day and for their wrongous violent and blasphemous Spoilation of the Goods &c. they shold pay the Drices extending to &c. and the profits that the Complainier might have made of the said Goods daily since the said Spoilation extending to &c.

The Owner of spuiled Goods has within three Years after commision of the Offence, an action of Spuileze for Restitution of the Things taken away, with the violent Profits, i.e. all possible Advantage that he may have made of them, called violent Profits, for that they are due upon account of violent Possession. A Spuileze intitles the Person injured to violent Profits, where the Thing spuiled by their proper Use afford Profit, as Horses Cattle Instruments or the like, thus 5 Shilling per diem for the committing of a Spuileze of a Labouring Ox till Sentence was modified as the violent Profit of Horses 28 Feb. 1668 Lord Justice Clerk contra Hume of Lenthill and others. But such Modifications depend much upon the Arbitrement of the Judge, who proceeds therein according to the Violence and Atrocity (i.e. Reuenous & grievousness & diuiseness) of the Spuileze. A Spuileze of Corns or the like, that have no Profits doth not found a claim to violent Profits Star Lib. 1. Tit. 9. §. 16. Lib. 4. Tit. 30. §. 7. In a Spuileze of a Caldron and Stellpot, the spilt Brewet and Expence of the Purge was allowed in the Name of Damages but the Rent of the Brewery and wast, and the Loss of the Pursuer's Trade by the Spuileze of the Pots of brewing Looms that fell down for want of Use, or Malt spoilt for want of the Caldron to brew in was not allowed 5 Feb. 1706 Star contra Dunbar

Dunbar and others. Albeit it was pleaded, that all these Damages resulted naturally from the Spuileze, as the Loss of ones Trade from the Distillation of his Hand, which infallibly to be modified for an Apportionment. Because a Craftsmen's Loss thro' the Want of his Hand is irreparable: Whereas the Loss of a Brewer's Trade by taking away his Caldron might have been hindered by putting another in the Room of it, as a Taylor's Loss ~~thro'~~ the want his hands and Cutters by buying others; nor needed the Brewer to suffer his Malt to corrupt by not heating it in one Time, or his Looms to fall in Slaves for want of Use, seeing he might have otherwise disposed of both when he had no Caldron to brew in. Violent Profits in this Action are estimated by the Pursuer's Value in Item: Because he ought to have pretium effectionis, or what he accounts himself to have lost. The looking may vary in sundry particulars located in a Summons of Spuileze being acknowledged or proved, the Pursuer's Value will be received to prove the rest, so they are things of a different Nature from that which is otherwise proved to have been spuiled 8. March. 1628 Brew. contra Murray Star Lib. 1. Tit. 9. §. 18. Lib. 4. Tit. 30. §. 2. The Pursuer of a Spuileze of Deender & other Kitchenware taken out of his Kitchen to his House, having proved the Spuileze was directed to an ear in item, as of the Quantities and Prices of the same 21. Feb. 1706 Kendalpon contra Dunbar. Yet so much for violent Profits the Goods taken away by their nature yielding no Profit as for Damages in the Pursuer's Employment of his Entertainment in Publique & Strangers, which was obstructed by taking away the household Furniture.

Possession is a sufficient Title to found this Action, without Security for the Pursuer to estimate his Right. For the Pursuer's principal title max est restitutendum, takes no Place or is no good Defence in a Spuileze; Because a Right to Movables is returned from Possession; and spoliator unto omnium est restitutendum. Yet the a Spuileze had a sufficient Right to be spuiled, that Right will not defend him against restoring the Person spuiled to his Possession. Tit. 9. Par. 5. §. 2. Because Law allows no Man to his own Judge and to judge at his own Hand. An Action of Spuileze was sustained vs a Person who had ~~the~~ the Keys of Chests and Coffers against him that broke open and rifled; The having of the ~~broken~~ Keys being sufficient to infer Possession against any who are not Parents or Masters, 25 July 1676 Macwel contra Macwells Parents or Masters are excepted for that they ordinarily intrust their Keys to the keeping of their Servants or Children in families. Yet a Widow was allowed to bring an Action of Spuileze for Corns taken out of her Possession: Albeit these Corns had been down and reaped by her Husband, and not confirmed by her in his Testament 26 July 1626 Kibbel contra L. Kerse. This Action lies not only against the principal Offender but also against such as were accessory to the Spuileze, who are all liable in