in solidùm, and have no Relief against their Accomplices; unless the Pur-
=suer assign the Decreet of Spuilzie to them. And in that Case, tho' the Pro-
=cipal Actor may be found liable to relieve the distressed Actors of the whole
Sum paid, he can recover only a proportionable Part of his Actor Ac-
=complices Stair Lib. 4. Tit. 30. §. 3. Recession to the unlawfull meddling with
=thers goods, by ones receiving them immediately into his House, and there
=after disposing of them, was sustained to infer a Spuilzie 26 January 1624
S. Roxburgh contra L. Langtoun. A Spuilzie committed in the Night
Time by unknown Persons, being insisted in against one in whose Hands
some of the Goods were found and upon his not appearing the Pursuer have
prove that part of the spuilzied Goods were found in his Possession: The
Lords found that the Presumption of the Defenders being Actor or Resetter
of the Spuilzie arising from the Proof led in his Absence, might be taken
off by his instructing that he came warrantably to such Goods. But in
Spir. the Defender was absent, and proceeded of Design, because it could not
proven who committed the Spuilzie: The Lords before Sentence ordained
new Edition to be served against him with Certification, that if he compe-
=ared and instruct how he came warrantably to the said Goods he should
find as Actor or Resetter of the whole Spuilzie. 11 June 1680 Gordon and
Robertson contra Menzies. The Pursuer having in Dispositione of several Beasts
Spuilzied, was ordained to make the Lever of that one least liable for
that were spuilzied, albeit he had no other Way of Exception to the Spuil-
=zie by Summary meddling with the Goods two Years thereafter, since no Violence
was used for attaining the real Possession of them. 30 January 1662. Irvin contra
McKartney. A Baron Baillie was not made obnoxious to a Spulzie, for seiz-
=ing a Malefactor with his Horse, which Malefactor had committed Homesuckeny
and Slaughter within the Barony Haddington. Pratt. 9 January 1611 Baillie
contra

4 November 1662. A Person who being charged by a Messenger did oppose Goods poinded upon the ground, was not found liable as accessory to a Spuilzie, tho' the Poinding was illegal in other Steps thereof for which he was not answerable, Kope May. Prat. Tit. Spuilzie, Baillie contra Gordon. Stair Lib. 1. Tit. 9. §. 17. A Spuilzie is in rem scale, as well as Theft, affecting the spuilzied Goods so as they may be recovered from all and sundry honest Purchasers of them for onerous Causes 21 November 1677 Kay contra Leonard Carnegy and others Stair Ibid. §. 10. Civil Action of Spuilzie lies even for Things stolen or robbed, altho' the Theft Robbery may be criminally pursued.

The ordinary Defences in an Action of Spuilzie are 1. That the Things taken away were meddled with fairly, by a colourable Title. Thus a Person was found not liable in a Spuilzie for meddling with a Horse carrying the Meal of thirled Corns grinded at a Mill without the Thirl: In Respect com-
=to a Law in the Majesty, and the Custom of the Country, such a Horse and
Load were forfeited to the Master of the thirl Mill. But the Defender was
=dained to restore the Horse and Meal in as good Case as when they were seized,
22 January & 19 March 1635. M'Kay contra Menzies. A Disposition omnium
bonorum with or without any Delivery was thought sufficient to avoid a Spuil-
=zie if used for attaining the real Possession of them 30 January 1662. Irvin contra
McKartney. A Baron Baillie was not made obnoxious to a Spulzie, for seiz-
=ing a Malefactor with his Horse, which Malefactor had committed Homesuckeny
and Slaughter within the Barony Haddington. Pratt. 9 January 1611 Baillie
contra

contra L. Tarphichen. A Spuilzie of Corns was elided by taking Possession
of them while growing upon the ground Kope May. Prat. Tit. Spuilzie Elliat
contra L. Buccleugh. A Messenger was found to incur a Spuilzie by executing
sine warrantable Letters of poinding against a Person not mentioned in the
Decreet; Upon which the Letters were raised: Seeing he was in probabili ignor-
=antia & bona fide to obey the Letters, without searching into the Decreet or
Warrant thereof. But it was recommended to the Messenger to restore to
the poinded Goods to the Employer, he ought to restore them to the Owners from
1620 Stat ordine Bards. The ordinary plea [illegible] Warrant
from one not known or sworn to the Messenger will not constitute the Spuil-
=zie, but this Defence is ordinary to the Lieut. Time & Degree must be libelled
meddling with & Keep thereof by the Purpose in Law of Spuilzie ought
to be. The Libel must set forth the Purpose for which the Poinding was used
Marcels and the same done to the prejudice of [illegible] Exception sustained
L. Ross contra Clerk. Where Corns poinded before Ripe, the
most ingrant Title will not purge [illegible] Law Dict. Sub Verbo
were shown that the Poinding was contrary to Law & Practice of Parliament
the Goods without citing the Owners, or Tenants were interrogated
who Goods were not found liable either to Spuilzie or to Damage
the Defender had peaceably the Goods in his Power or the Spuilzie
Months without having required Restitution of them first for an onerous Cause.
But if the Defender had the Goods by an onerous Title, it was found relevant
owing to the Owners & reasons thereof and the ordinary Principles are not the same at
Hospitals, but we took them away summarily by the Bailie's Warrant, with-
=out Solemnities & Process in which the Defender was cited 7 July 1671
Strachan contra Gordons. But a Decreet of Forfeiture in favours of the Queen of
Sanctuary was not sustained to free the Cautioner from a Spuilzie, by his
suffering Cattle mixed with those goods before the Term of Payment of the
Bail be elapsed, or before it was or could be distressed for Cautioner 17 July
1633 Kirkton contra Thorgerson. 2do. That the Goods taken away were deli-
=vered to the Defender by the Pursuer, is a good Defence in such a Process
the Libel contrary to the Libel, Spotswood Prat. Tit. Spulzie and Spoliation
Stair Ibid. §. 20. And the Lords found that Exception against a Spuilzie of
Corns viz. That with the Pursuers Consent they were compted by Bills
Men and delivered to the Defenders in Satisfaction of Debt, relevant to be
proved by Witnesses: and that it was not necessary to prove the Consent by
Writ or Oath of Party 26 July 1620 Russel contra L. Kerse. The Person mino-
=rally charged with a Spuilzie of Goods, having pleaded, That he ought to be
assoilzied because the Goods in Question were disponed and voluntarily de-
=livered to him by the Pursuer; and offered to prove this Defence by those called as
accessory to the Spuilzie, of Purpose to set them from being necessary Wit-
=nesses for him: The Lords, if the Pursuer resolved to insist against these others
as necessary, ordained the Process against the principal Party to stand till their
Succession were discussed, that such of them as should be found innocent might
be used as Witnesses, or if he would not insist against them, allowed them to
be