

1713. July 10.

JEAN CRAWFORD, Relict of James Crawford, Son to the Laird of Ardmillan,  
against JOHN KENNEDY of Baltersan.

No 285.

JEAN CRAWFORD having right by progress to some tacks set by the Bishop of Dumblain to the deceased Kennedy of Baltersan, of the teinds of his lands, pursued John Kennedy now of Baltersan, as heir to the defunct his father, for payment of 16 years tack-teind-duties; during which time, it was proved, that he the defunct was heritor of, and possessed the lands. THE LORDS found the defender liable for these teind-duties, albeit it was not proved that he was in the natural possession, or that he received a joint duty for stock and teind; in respect it is presumed, that he intromitted with the whole rents comprehending both stock and teind; seeing it is not alleged that any other person uplifted the teind.

*Eol. Dic. v. 2. p. 160. Forbes, p. 702.*

## SECT. II.

## Possession of Moveables presumes Property.

1624. November 24. TURNBUL against KER of Cavers.

IN an action of spuilzie at the instance of Turnbull of Symington against Ker of Cavers, for spuilziation of certain kine and oxen, which was restricted to wrongous intromission, the LORDS found an exception proponed for the defender relevant to elide the action, founded upon a pointing from the Laird of Bedrule, the defender's debtor, of the goods libelled, off his ground; and that the said goods were in the Laird of Bedrule's possession divers years before the pointing, and, at that time, used by him as his goods, by working of them, and milking of the kine, and that the young goods were bred upon the said lands, being the increase of the said old goods. This exception was found relevant, albeit it was both specially libelled, and also *replied* for the pursuer, That the goods libelled properly belonged to himself, and were bred by him upon his own proper lands of Symington, and there used by him at his pleasure; and thereafter the same were put by him in grazing to Bedrule, upon the lands libelled, out of the which the same were alleged to be taken and pointed, upon

No 286.

Found, in an action of spuilzie, that goods remaining in the possession of a person, and used by him in all respects, are to be presumed his property.

No 286.

condition that the Laird of Bedrule should have for the grazing thereof, the milk and the first calf; likeas divers others of the young breeding of the said goods were received by the pursuer; and also, how soon he heard of the pointing, viz. within a day or two thereafter, he offered to make faith that the goods were his own. Which reply was not respected, but the exception sustained; seeing the Lords found, That the goods remaining divers years together in the possession of any person, who keepled them upon his own ground, and milked and used them, and the increase thereof, all this time, as his own proper goods, the creditors of such possessors might lawfully point them as the goods of their debtors who had kept them in their possession as their own goods divers years together; and so this presumptive qualification of property consisting in the retention of possession sundry years, was preferred to the pursuer's offering to prove himself the only true owner of the goods, as being bred upon his own heritage, and sent only in grazing to that person, who is alleged to be the defender's debtor; which reply was not found relevant, seeing the pursuer could not qualify real possession of the goods by the space of two years preceding the spuilzie, albeit he alleged the property of the same to be truly his.

In this process also, the LORDS were of the mind, albeit it past not into interlocutor, That steelbow goods, being delivered by the master to his tenant at the setting of any room, after the manner of setting with steelbow, might be pointed by the tenant's creditor for the tenant's debt; and that the master would have only action against the tenants for the steelbow, at the time appointed, for delivery thereof, in respect the steelbow goods, being either corn or cattle, became the tenant's, seeing every year they were changed; and the first which were delivered to the tenant by the master could not probably be extant, in respect of the alteration by the course of years, which alteration made the same to become absolutely the tenant's own, and subject to his debt.

Act. Hart.

Alt. Belsbes.

Clerk, Gibson.

Fol. Dic. v. 2. p. 160. Durie, p. 151.

1665. January 27.

Sir JOHN SCOT and WALTER SCOT *against* Sir JOHN FLETCHER.

No 287.

In a process for restitution of a book, the pursuer was obliged to condescend *quomodo desit possidere.*

WALTER SCOT, as being assignee by Sir John Scot of Scotstarvet to an Atlas Major, of the late edition, pursues Sir John Fletcher for delivering thereof, as belonging to the pursuer, and now in his hand. The defender *answered, Non relevat*, unless it were condescended *quo titulo*; for if it came in the defender's hands by emption or gift, it is his own; and *in molibus possessio præsunit titulum*; seeing, in these, writ nor witnesses use not to be interposed; and