

suer *answered*, That he offered him to prove that he had disposition of these goods from that party, from whom the defender alleged to have pointed them, and an instrument of possession thereupon; and that he had paid mail for the house where they were several years, and still when he came to Glasgow he did reside in the house and made use of the goods. The defender *answered*, That his defence did yet stand relevant, because the condescendence makes it appear, that the pursuer's right was from the defender's debtor, and any possession he alleges might be simulate; and the defender, in fortification of his legal execution, offered him to prove, that his debtor remained in the natural possession of the house, and made use of the goods as his own goods, and so was in natural possession thereof, whereby he might lawfully point from him. The pursuer repeated his reply, and further *alleged*, That one of the Bailies of Glasgow alleged that they were his goods at the time of the pointing, and offered his oath. The defender *answered*, That that Bailie was neither the pursuer's servant, neither had commission.

THE LORDS found the defence for the pointer relevant, and more pregnant than the condescender's allegiance, and repelled that member of the duply anent the Bailie's offering of his oath.

*Stair, v. 1. p. 391.*

1666. July 12. MR JOHN HAY *against* SIR JAMES DOUGLAS.

MR JOHN HAY of Haiston and Sir James Douglas having both rights of apportioning of the estate of Smithfield, did agree, that Sir James should have three parts, and Mr John one, and did obtain a decret at both their instances for removing a tenant from some acres; but Sir James laboured and did sow the whole. Mr John did thereafter sow as much corn upon the sown land as would have sown his quarter, and now pursues an intrusion against Sir James, who *alleged* absolvitor, because Mr John was never in natural possession, and offered to give the fourth part of the rent the acres paid before. The pursuer *answered*, That the removing of the natural possessor was equivalent, as if Mr John had been in natural possession of his quarter; and therefore the offering to him the rent was not sufficient, yet he was willing to accept the rent for this year, so as Sir James would divide for time coming.

THE LORDS found that in this process they would not compel Sir James to divide, but sustained the process, *ad hunc effectum*, that Mr John should have the fourth part of the crop, paying Sir James the expenses of labourage.

No 16.

No 17.

What understood to be 'natural possession' of land.