

No. 4. to be kept to their profit having right thereto. The Lords by interlocutor repelled all the said exceptions, by reason of the libel and answers, and assigned to the Spaniard a day to prove his libel.

*Maitland MS. p. 110.*

1567. February 5.

LAIRD of CULTMALINDIE against LORD OLIPHANT.

No. 5.

Eating up growing corn, upon ground that had been common, but peaceably possessed by another as his property only for two years, found to infer spuilzie.

ANENT the action pursued by the Laird of Cultmalindie against Lord Oliphant, for wrongous eating and destroying, with horse, nolt, and other bestial, of certain corns tilled and sown by the said Laird and his tenants, upon their own proper ground, it was alleged by the said defender, That he did no wrong in eating of the said corn, because the ground whereupon these corns grew pertained to the said Lord Oliphant in common, by reason of an appointment made betwixt the said Lord's predecessors and the the said Laird's predecessors; and also it was alleged, That it was the first year of the riving out and sowing of the said corn, and so he did no wrong in defending his possession, he being in possession thereof from the time of the appointment to the time of the tilling thereof. It was alleged by the said pursuers, That they were in peaceable possession of the said ground as property, at least for the space of two years before the destruction of the said corn, by labouring, and tilling, and sowing of the said land and ground, in shearing, leading, and disponing of the corns that grew thereupon, for the space foresaid. It was alleged by the defender, That was not libelled, but allenarly tilling and sowing the corn alleged to be destroyed. It was alleged by the pursuer, That it was enough for him to libel for the spuilzie of the said corn, as said is; but because the defender alleged it to be the first year of the sowing, the said pursuer behoved to reply, and allege as above-written, because it resulted of the defender's allegiance. Which reply and libel of the pursuer was admitted to his probation by the Lords' interlocutor.

*Fol. Dic. v. 2. p. 388. Maitland MS. p. 181.*

1580. July 22.

————— against LORD SINCLAIR.

No. 6.

To what extent is restitution due?

THERE was a clerk in Dysart who pursued my Lord Sinclair for the violent ejecting him forth of a salt pan, which he had in feu and heritage from the said Lord; and he qualified his ejection in this sort, that the said Lord stopped the colliers who were hewing in the heugh coals for panwood to the pan, in so far as he compelled the said colliers to hew to himself, and compelled the leader who led to the clerk's pan to his own behoof, and so, through that unlake of wood, the said pan lay idle, wherefore he concluded in his libel the profits of the salt, albeit he was ejected forth of the winning of his coal. It was excepted against