

## P O I N D I N G.

1543. July 23.

WEDDERBURN *against* HAY.

**T**HE Laird of Wedderburn called Mr George Hay of — for spuilzie of certain goods: Hay *alleged* he did nae spuilzie, because these goods were apprised by an pursuivant, by the Court's letters passed upon a decret of the Lords of Council against the Laird Blackader for apprising the said Laird Blackader's goods; and these goods were got by the officer coming furth of the town of Blackader, and prized as his goods, and delivered and assigned to him in payment by the said officer. It was *replied*, That the time of the apprising, and immediately before the same, the Laird of Wedderburn's servants came to the officer, and offered to make faith and proof by witnesses, that these goods were the said Laird's goods, and that in presence of the said Mr George Hay's servants and household men, being presently with the said officer, sent with him by the said Mr George, and that the goods came not to his profit, and so wrongously taken by the said officer and his servants in his name, and of his knowledge and command, to his use and profit. The said spuilzie should be judged of his command and participation; for he could not pretend ignorance of it done by his servants, in his name and command, to his use. THE LORDS repelled the exception, admitting the summons and reply to probation, and so in pointing; the officer ought not to point but the man's goods that the letters specify; and he ought to admit any man to make faith, and to prove the goods his, and to stop the pointing: And howbeit the officer indorsed the goods pointed by him the man's own goods, yet the Lords will admit another man to prove these goods his, and not the man's whose goods the letters bids point, because the officer may fail in the executing of his office and duty; but and the officer or the party that got the goods pointed would accept these goods the party's own

No 1.

A third party compearing at a pointing, and offering to make faith that the goods were his; the Lords found, that the rejecting of this offer inferred a spuilzie; unless the pointer would offer to prove, that the goods belonged to the debtor.

- No 1. proper goods, then the probation of the property of the goods would be given to the officer and he for whom they were poinded, because it is to prescribe for the officer, and that he does not to the other party, that alleges these goods to have been his, and not the man's whose they were poinded; and this is the practick of Scotland. And anent the said reply in the said action of spuilzie of Wedderburn against Hay, *certata fuit latere precedenti*, that the said Mr George could not be excused frae the spuilzie, because the officer was sent by him, and his own household servants with him, and his gear brought to him, and come to his use and profit, and that therefore it is not presumed but that the knowledge of the gear poinded, and how the Laird of Wedderburn his servants offord to swear and prove the gear their master's, and not the Laird of Blackader's, came to his ears. (See APPENDIX.)

*Fol. Dic. v. 2. p. 93. Sinclair, MS. p. 60.*

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1553. July 6. ——— against LD GLADSTANES' BROTHER.

No 2.

No creditor may poind a tenant for the landlord's debt, so long as the landlord has moveable gear proper of his own, or lands to apprise; as was practised in the action betwixt the L. of M. and the L. of G. in a matter of double poinding.

*Fol. Dic. v. 2. p. 93. Maitland, MS. p. 117.*

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1555. January 12. & 13. DAVID SIBBALD against LORD SINCLAIR.

No 3.

NA man may poind or distreinzie ane bucket or wand of ane salt pan, for ony kain salt or uther dewtie auchtand to him be the awner thairof, gif thair be uther gudis and geir, sic as salt, or insicht gudis, pertening to him streinzie-abill for the said debt.

*Fol. Dic. v. 2. p. 95. Balfour, p. 400.*

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1556. January 14. A. against B.

No 4.

No man may poind a tenant's teinds for a debt of them of whom he has the teinds, notwithstanding the act of Parliament make mention, that any tenant shall be no further poinded for his master's debt, but for one term's mail; as was directed by the Lords, in an action pursued by A. against B.

*Fol. Dic. v. 2. p. 93. Maitland, MS. p. 120.*