

1627. November 15.

GULLAN *against* DUNMUIR.

No 12.

Plough-oxen were found poindable, though they had been ploughing the day before, not being in the ordinary time of labouring in that part of the country.

IN a spuilzie at the instance of Gullan against Dunmuir, an exception of poinding being proponed, and a reply being made for eliding thereof, that the goods libelled (being oxen) were plough goods, and drew in the plough, and laboured the ground the day immediately preceding the spuilzie, albeit the pursuer then had more goods beside him, which would have satisfied the debt; the LORDS found the exception relevant, notwithstanding of the reply; seeing the act of Parliament whereupon the reply is founded, viz. the 98th act, 6th Parl. Ja. 4. prohibits plough goods to be poinded the time of the labouring; and this spuilzie was committed, as is libelled, in October; which the LORDS found not to be the time of the labouring of that ground, it being a mountainous high-land ground in the north: And seeing the pursuer replied only, that they were in the plough one day and no more before the spuilzie; which was not sustained, and therefore the exception was admitted; which I thought the more hard, seeing nine oxen were poinded for 80 pounds only.

Act. Gibson.

Akt. ———.

Clerk, Gibson.

Durie, p. 312.

* * * Auchinleck reports this case :

A SPUILZIE is pursued of oxen alleged poinded upon the 24th of October 1624 in the brae of Murray. The defender *excepted*, That they were lawfully poinded where they were pasturing, and where they had pastured all the summer preceding. The pursuer *replied*, That the oxen ought not to have been poinded, seeing he offers him to prove, that they were yoked and had been tilling the day before the poinding, and conform to the act of Parliament such goods should not be poinded the time of labouring. THE LORDS sustain the exception, in respect of the poinding in that time of the year in that part of the country, where it is not presumed to be the ordinary time of labouring.

Auchinleck, MS. p. 159.

1627. November 23.

WEILL *against* SCOTT.

No 13.

A CONTRACT was made betwixt two parties: The said contract is sought to be reduced at the instance of one of the contractors. During the dependence of the action of reduction, the other party uses poinding upon the said contract. In end the contract is reduced, and after reduction the party reducer intents action of spuilzie for the goods poinded. The defender alleged he did not wrong to poind *pendente lite, quia eventus litis erat dubius*. THE LORDS would not sustain action of spuilzie.

Auchinleck, MS. p. 159.