

1628. *March 9.*SCOTT *against* WALL.

No 16.

A MESSENGER, who had poinded by virtue of letters wrongously raised, is pursued for spuilzie, at least wrongous intromission. THE LORDS absolved the messenger, if the gear poinded was not still in hands, but delivered to the party.

Auchinleck, MS. p. 160.

1628. *November 21.*WATSON *against* REID.

No 17.

Pointing of plough goods was sustained, although that day employed, as the labour was over for the season. The party was not allowed to say he was about to fallow.

IN a spuilzie, Watson *contra* Reid of Aikenhead, an exception of pointing was sustained, deduced upon a decret; decerning the ground to be poinded for an annualrent, wherewith the lands was burdened; and the said decret was sustained, albeit the heritor of the land, and also that the tenants of the lands, against whom the sentence was given, were all dead the time of the executing of the sentence, by pointing, which was not found to be an impediment to the execution thereof, seeing sentences of that kind are real *et afficiunt fundum*, and may be lawfully executed against the same, whoever be the heritor of the land, and whosoever be possessor thereof, without any new sentence, so long as the party obtainer of the sentence lives. Also the LORDS found, that the tenant's goods may be poinded by the annualrenter for more than was owing to his master by him, and for more than the duty which he pays for the land, notwithstanding of the act of Parliament Ja. III. which was found to have place only where the tenant may be distrest for his master's moveable debts, and not to concern debts and burdens wherewith lands are really affected; for if the master should collude with the tenant, or otherways set the same to him for a small duty, the annualrenter might greatly be prejudged thereby, that he could not point the tenants goods for more than that small duty; and it was not respected, which was *answered*, That the annualrenter might comprise the heritable right of the lands, which was more equitable than that the poor tenant, or labourer of the ground, should be distrest therefor; notwithstanding whereof, the pointing was sustained, and here it tended to purge a spuilzie.

Act. *Rollock.*

Ait. ———.

Clerk, *Gibson.*

Durie, p. 389.

1628. *November 22.*

IN the foresaid action of Watson against Reid of Aikenhead, mentioned 21st November 1628, it being *replied*, That the pointing could not be sustained to purge the spuilzie; because the goods libelled were plough goods; and that the pursuer had then other goods poindable, condescended upon, conform to the act of Parliament, James III. *anno* 1483; and the defender *duplicing*, That,

before the poinding, the pursuer's bear-land was completely tilled, sown, and harrowed, so that the time of labouring ceased, and so that the act of Parliament had no place in this case; this duply and the poinding was sustained, notwithstanding of the reply and act of Parliament, and notwithstanding that the pursuer's summons and reply bore and expressed, and the pursuer offered to prove, that the goods were taken away that same day, immediately when they were loosed out of the plough, being the 10th of May; which was not respected; for the LORDS found, that they might lawfully be poinded that same day after the ploughing, if that same day before they were poinded the labouring was outred; neither was it respected, that the pursuer might have had *fauchin* to till after the bear-seed was ended.

No 17.

Fol. Dic. v. 2. p. 94. Durie, p. 399.

. Auchinleck reports this case:

Plough goods may be poinded that same day the bear-seed is ended, and tilling, sowing, and harrowing, for that year, perfected.

Auchinleck, MS. p. 160.

. This case is also reported by Spottiswood:

WATSON pursued Reid for spoliation of certain horses and oxen. *Alleged*, That he poinded them lawfully, by virtue of a sentence recovered against the pursuer. *Replied*, He could not cloath himself so; because, the spoliation was the 8th of May, in time of labouring, during which they could not be poinded. they being plough goods, wherewith the pursuer actually laboured his land. *Duplied*, He offered to prove, that the pursuer had done with all his labouring before the alleged spoliation.—THE LORDS sustained the exception and duply.

Spottiswood, (EJECTION, &c.) p. 94.

1629. January 22.

A. against B.

If goods be poinded, and suffered to remain in the possession of the debtor, he deceasing, another creditor pursues the defunct's relict, as intromitter with the defunct's goods and gear, intromitted with by her, he may not allege, that it was gear poinded by _____ before her husband's decease, and only suffered by the said _____, who poinded the same, to remain in his house, under his tolerancé; because a tolerance presumes a transaction.

No 18.

Auchinleck, MS. p. 160.