

No 68. 1611. *July.* VANS *against* BALNAGOWNE.

IN a contravention committed by mens' tenants, the pain will not be decerned against their master, unless either his command or rathibition be qualified, or great violence proved.

*Fol. Dic. v. 2. p. 342. Haddington, MS. No 2269.*

\* \* \* Kerse reports this case :

IN an action of contravention pursued by Alexander Vans *contra* the Laird of Balnagowne, the LORDS sustained the summons upon a deed committed by the Laird's tenants, and would not astrict the pursuer to prove, that the same was done of the Laird's causing, command, &c.

*Kerse, MS. fol. 232.*

No 69. 1617. *January 12.* GALBRAITH *against* ANDERSON.

IN an action betwixt John Galbraith and William Anderson, the LORDS found, That the deed of the servant could not oblige the master, except he were feed servant from term to term.

*Fol. Dic. v. 2. p. 343. Kerse, MS. fol. 232.*

1623. *March 28.* MURISLAW *against* HALYBURTON.

No 70.  
Contraven-  
tion sustained  
against a ma-  
ster upon  
a deed of his  
household  
servants,  
though it was  
not prov-  
ed, that the  
servants had  
authority  
from his ma-  
ster.

IN a contravention pursued by Murislaw against Halyburton of Pendicle and John Trew of Lamington, the LORDS found, That the deed of two of John Trew's domestic servants in taking away all the clipped wool, being in the pursuer's tenant's houses, was a sufficient cause to decern the said John Trew in the pain of the contravention ; for seeing, that if it were otherways decerned, powerful men might secretly direct their household servants to oppress their neighbours who had charged them with law-burrows, and eschew the pain, because the pursuer could not prove the secret command given by the master to his servant.

*Fol. Dic. v. 2. p. 343. Haddington, MS. No 2846.*

1628. *February 2.* SCOT *against* BANKS.

No 71. A WOMAN while her husband was out of the country, having, in his name, unlawfully and violently intromitted with goods belonging to a third party,

and disposed of the same at her pleasure, the husband was not found liable to repair this wrong done by her. No 71.

*Fol. Dic. v. 2. p. 343. Durie. Spttiswood.*

\*\*\* This case is No 220. p. 6015, *voce* HUSBAND AND WIFE.

1634. January 23.

A. against B.

A MARRIED woman being decerned in a process of scandal to crave pardon and pay a fine, the LORDS assoilzied her husband from the fine, but ordained her to obtemper the other branch of the sentence. No 72.

*Fol. Dic. v. 2. p. 343. Auchinleck.*

\*\*\* This case is No 282. p. 6072, *voce* HUSBAND and WIFE.

1668. February 28.

LORD JUSTICE CLERK *against* HOME of Linthel, the PROCURATOR-FISCAL, and OFFICERS.

THE Lord Justice Clerk being fined in L. 50 for his absence from the Lord Home's head court of his barony; the officers poinded an ox in October, after the ploughing was begun. The Lord Justice Clerk pursues a spuilzie, as being poinded in labouring time, and insisted against Linthel as depute, who gave the decret, and precept to poind, and as he who knew of the poinding of the ox by the officer, before he was delivered, and commanded to deliver him, and against the officer who poinded, and the procurator-fiscal, who, by the executions of the poinding produced, received the ox from the officer. At the advising of the cause, Linthel having deponed by his oath, that the officer had told him an ox was poinded, and he commanded the officer to deliver him, and that he knew not he was a labouring ox; so that that member not being proved, the question was, whether Einthel, as depute, giving a precept to the officer to poind in common form, was liable for the spuilzie, if the officer did illegally poind, and so was answerable for the fault of the officer?

THE LORDS found him not liable, and therefore assoilzied Linthel; and found, That the execution of the poinding was sufficient probation of the delivery of the ox to the procurator-fiscal, especially seeing the defenders defended themselves with the poinding, and themselves produced the execution; and for the violent profits, the LORDS decerned five shillings for every day, from October to May, inclusive, being labouring time, and that yearly, since the spuilzie till the sentence.

*Fol. Dic. v. 2. p. 343. Stair, v. 1. p. 538.*

No 73.

A Judge was not found liable for the fault of the officer, who in execution of a poinding directed to him in common form, poinded an ox in labouring time.