

abides at the same; which the LORDS repelled, in respect of the 113th act, Parl. 9. Ja. I., whereby it is declared, 'That brieves may be lawfully impugn-
'ed, if they be razed or blotted in suspect places,' viz. in the name and surname of the follower and defender, and the name of the land, or of the cause whereupon the brieves were purchased, and the date; which act the LORDS found to extend to the date of the execution of the brieve also, albeit the defender *alleged* it did only extend to the date of the brieve itself, and not to the date of the execution thereof. But the LORDS repelled the same, and found the act should extend to the date of the execution, seeing a brieve not executed is not a brieve, and there can no exception be proponed while the same be executed; so that the act declaring what exceptions should be admitted against brieves, cannot mean but of brieves executed, and therefore the date of the brieve should comprehend the date of the execution thereof. See PROOF.

Act. *Nicolson & Lawrie.*

Alt. *Aiton & Neilson.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 467. Durie, p. 229.

No 11.

1629. November 24.

DOWNIE *against* BROWN.

In a spuilzie, an exception of poinding being proponed to elide the same, which poinding was quarrelled, because it proceeded upon a sentence for conviction of blood, tried in a baron's court by the assizes; and, in the sentence, neither the names nor the numbers of the assizers were expressed therein, as it ought to proport, and also the poinding had no warrant in writ, for there was no precept directed by the baron bailie, after the sentence to poind for the unlaw, without which the decret could be no warrant to poind; likeas the poinding was executed upon the morn after the sentence, whereas there ought to have been 15 days interjected betwixt the poinding and the decret; for after the sentence, the party ought to have been charged to pay the penalty and fine upon 15 days, as term of law, before he could have been poinded, which not being done, the poinding was null. These objections against the poinding were repelled and the same sustained, seeing the sentence bore, 'that it was tried by a condign inquest,' and the persons' names needed not to be expressed, and there needed no precept in writ to poind, but the direction of the Bailie or baron in court was enough, and there needed no charge on 15 days to have preceded, the poinding being for a fine in a fact tried by an assize, for the which the party might be instantly put in ward after the sentence, albeit in civil matters, as for farms or sicklike decerned in baron courts, the officers cannot poind, before the charges to pay be executed upon 15 days, which is not neediul in criminals and such like punishable acts. See POINDING.

Act. *Gilmor.*

Alt. *Hay.*

Fol. Dic. v. 1. p. 466. Durie, p. 468.

No 12.

A poinding being executed for recovery of a fine for payment of which, the party might have been instantly imprisoned, it was found, that in such a case, there was no necessity for a previous charge.