

1675. June 30.

LADY STANEHILL *against* CAPTAIN BURD.

CAPTAIN BURD having obtained decret of removing against the Lady Stanehill, from a house in Edinburgh, before the Sheriff; the sheriff-officer was thereupon proceeding to ejection; the Lady gave in a bill, desiring suspension and a present warrant to stop the ejection; because there was no charge given, or expired upon the decret, which ought to have been done, by the act of Parliament the 16th day of November 1669, which, though it mentions only poinding not to be, without the expiring of a previous charge, yet, *ex paritate rationis*, the same should be observed in other executions, the reason, though not expressed, being, that parties may have that respite, either to satisfy or suspend.

THE LORDS found the act to extend only to poindings.

Fol. Dic. v. 2. p. 92. Stair, v. 2. p. 338.

1675. July 9.

COTTS *against* HARPER.

HARPER having poinded some iron from Cotts his debtor, a brother of Cotts gave in a bill, representing, That he had appeared before the messenger, executor of the poinding, and had offered to make faith, that the iron poinded did not belong to the debtor, for whose debt it was poinded, but to the petitioner his brother; and that the messenger against law had proceeded; and, therefore, desired that the goods might be summarily restored.

THE LORDS ordained the parties to be heard upon the bill, in respect the parties and messenger lived in Edinburgh.—It was *alleged* for the defender, Absolvitor; because the pursuer did not appear before the solemnity of poinding was ended and complete. It was *answered*, That the pursuer appeared within an hour, or thereby, after the poinding, at the time that the iron poinded was weighing in the weigh-house, before it came in the actual possession of the creditor.

THE LORDS found, that, after the poinding was ended, the messenger, or party poinder, was not obliged to admit of the oath of any person; and, therefore, refused to cause the goods to be summarily restored, but left the party to his ordinary course of proving his property in the iron in question, as accords.

Fol. Dic. v. 2. p. 93. Stair, v. 1. p. 342.

*** Gosford reports this case :

IN a spuilzie, pursued at Colt's instance against Harper, it was *alleged*, That the goods were lawfully poinded. It was *replied*, That the pursuer did come

No 22.

By act 4th
Parl. 1669,
poinding for
civil debts,
cannot proceed
without
a previous
charge.

No 23.

After the
poinding is
ended, how-
ever recently,
the messenger,
or party
poinding, is
not obliged to
admit the oath
of any person,
to prove the
property to
be his, who
cannot there-
fore recover
it summarily.