

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 pointer, 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.

No 23.

to the ground of the land where the goods were carried, and there did offer to make faith, that the goods belonged to him, and not to the debtor, for whose debts they were poinded. It was *answered*, That any offer to make faith was not *debito tempore*, the poinding, and whole executions thereupon, being complete.—THE LORDS assoilzied from the spuilzie; and found, that the goods being carried to the Market Cross, and apprised for the debt, before any offer to make faith that they belonged to another, were lawfully poinded, and could not be liable to a spuilzie; reserving, by an ordinary action, *rei vindicationem*.

Gosford, MS. No 776. p. 486.

1675. July 14.

VISCOUNT STORMONTH *against* ANDERSONS.

No 24.
Poinding of any goods, on the land, to whomsoever belonging, for the feu-duty, sustained.

JOHN MERCER being a feuar of the Viscount of Stormonth's, disposed a part of his crop to Andersons, which was delivered and carried to another barn-yard. Stormonth's chamberlain having obtained decreet for poinding of the ground against Mercer for the feu-duties, did thereupon poind these corns delivered to Andersons, whereupon they obtained decreet of spuilzie before the Sheriff, which now is craved to be reduced; because, the superior might warrantably poind whatever he found upon the vassal's feu-land for his feu-duty, which is *debitum fundi*, but much more the crop of the feu-lands, which are hypothecated for the feu-duties: It was *answered*, *imo*, That there were sufficient goods upon the ground besides those that were disposed and delivered, and that they were carried to another ground. It was *replied*, That the other ground was a part of the lands liable to the same feu-duty, and whatever might have been pretended, if the buyers had compeared, and offered to make faith that the corns were theirs, and shown other moveables poindable; no such thing being done, the superior might warrantably poind any part of the goods, upon any part of the feu-lands, for the feu-duty:

Which the LORDS found relevant.

Stair, v. 2. p. 346.

1676. February 10.

DUNCAN *against* KIDS.

No 25.
If cattle poinded for trespass are used by the poinder, and not put in a poind-fold, it is spuilzie.

PATRICK DUNCAN pursues a spuilzie of a horse against Patrick and William Kids, who *alleged*, Absolvitor; because they found the horse pasturing upon their grass, and did, therefore, poind the horse, till the skaith was paid, and offered him back within 48 hours, upon payment of 40 shillings for the skaith.

THE LORDS repelled the defence, unless it were proponed in these terms, that the horse being found upon the property, and in the skaith of master or tenant