

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

thereof, he had been apprehended, and brought to a poind-fold, or some other safe place, where there was sufficiency of grass, or fodder and water, and that he might be detained there till the skaith was apprised, and decerned by those having jurisdiction in the place, as baron, heritor, or others, and that thereupon the horse was lawfully appretiated, with the ordinary solemnities, for satisfaction of the skaith; but found, that, otherwise, he might not be either detained or made use of.

No 25.

Fol. Dic. v. 2. p. 95. Stair, v. 2. p. 414.

* * * Gosford reports this case:

1676. February 13.—IN a spuilzie, pursued at Craigie's instance against Duncan, of a horse taken off his land, whereof he was undoubted proprietor; it was *alleged*, Absolvitor; because the defender had a tack from the Magistrates of Dundee, who had both right and constant possession of the said lands, and thereupon had a declarator depending; and, as to the violent profits, he could not be decerned; because, he had offered back the horse within 48 hours, upon payment of the damage. It was *replied*, That the pursuer being *in libello*, and in a pursuit of spuilzie, ought to be preferred to the probation of his undoubted right of possession; and, for the violent profits, they ought to be decerned, because, it was offered to be proved, that the defender did immediately employ the horse spuilzied upon his own work, and for carriage, within the town of Dundee, and did not keep him in any place where the pursuer was certain to find him.—THE LORDS, as to the first part, did ordain mutual probation, the pursuer being *in spatio et libello*; but, as to the second, they found, that an heritor, who poinds a neighbour's goods for damages, ought to have poind-folds, or other places, to keep them in, where they might have grass, or water and fodder, and so may be found out, and required back; otherwise they are liable to violent profits.

Gosford, MS. No 853. p. 540.

1677. November 24.

Lord HATTON, Supplicant.

THE Lord Hatton gave in a supplication, bearing, "That a tenant of his had left the room between terms, and had left several stacks in the barn-yard, and was due to him several bygone rents, desiring a warrant from the Lords how to poind the stacks;" whereupon the Lords considered the just and orderly way of poinding stacks of corn, which differs from poinding of other moveables, that the same may be adjusted to the sum poinded for, and if horse, nolt, or sheep be poinded, one of them only which exceeds the sum is to be poinded and the superplus offered back by the messenger, and in case of refusal consigned; but, in stacks of corn, the quantity of a stack cannot be known or

No 26.
Method of
poinding
stacks of
corn.