

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.

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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

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Method of
poinding
stacks of
corn.

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apprised by the view; and therefore the LORDS appointed, that if the poulder please presently to carry away the corn poinded, leaving the straw, that the messenger must appoint two taskers upon oath, to keep, thresh, and deliver the corn by measure; or otherwise, if the poulder desire to leave the corn or fodder together on the ground, that the fodder may be eaten as he hath need, the messenger may appoint two skilled men for casting proof, and who upon oath may turn over the stacks, sever the proof sheaves, thresh and winnow the same, which must be instantly done before the messenger go, and the stock appraised and delivered to the poulder, effeiring to the sum; and in either case, a rip of the corn to be poinded, must be appraised first upon the ground, and again at the market-cross of the jurisdiction, or at the accustomed place of the barony, if it be a baron's decreet, estimating what the boll of such corn and fodder is worth in that place at that time; and the poulder may poind every stack severally for any part of his decreet he pleases, that may best suit thereto, and so may proceed to poind the rest in order, as he hath use for it; but, if he poind not all at once, other creditors may prevent him in poinding, except as to that year's rent whereof these stacks are the crop, wherein his hypothec will prefer him, and he may lawfully hinder others, unless he found caution within his barony for that year's rent *pro tanto*.

Fol. Dic. v. 2. p. 92. Stair, v. 2. p. 566.

No 27.

It is spuilzie
to poind
plough goods
in ploughing
time.

1678. June 7.

WOOD against STUART.

WOOD in Bute pursued a spuilzie of some goods. The defender *alleged* lawfully poinded. The pursuer *replied*, They were plough-goods which were not lawful to be poinded in plough-time. It was *duplied*, That plough-time is no determined time, but must run from the actual yoking of every man's plough; but the pursuer's plough neither had been, nor could be, yoked before this poinding because of a great frost. It was *triplied*, That plough-time must be accounted according to the time that ploughs use to go in any place in Scotland, beginning in October and ending in June.

THE LORDS found, That plough-goods ought not to be poinded during the ordinary time that ploughs use to go, by the custom of several places in the country, which being come, though the ploughing was hindered to begin for frost, they found plough-goods could not be poinded, neither did they consider what goods were necessary for ploughing the defender's ground, but what was accustomed.

Fol. Dic. v. 2. p. 94. Stair, v. 2. p. 621.