

No 26.

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.*

\*\*\* Fountainhall reports this case:

WOOD pursues Stuart for a spuilzie of labouring horses. *Alleged, 1mo*, His labouring was only of some few burrow acres, which was not to be till January, and this poinding was in December; *2do*, There was then a great frost, and so no labouring; *3tio*, Six horses were too many, and so he might only poind some of them.

Fountainhall, MS.

No 27.

1678. July 19.

TILlicOUNTRY against L. ROLLO.

IN a case between Tillicoultry and L. Rollo, the LORDS found a bond wanting witnesses could not be adminiculate nor made up by extraneous witnesses. *2do*, Where the penalty in a bond was left blank, and the said blank scored, the LORDS refused to modify any expenses, but assoilzied altogether therefrom. *3tio*, A man may cause poind goods of his debtor's that are in his own custody, and that for debt owing to him by the debtor.

Fountainhall, v. 1. p. 10.

No 28.

1679. December 13.

HAY against HAY.

HAY of Kirkland pursues Patrick Hay for spuilzieing of his corns and two barn-yards, wherein lawful poinding being sustained, by way of defence, an execution of the poinding was produced, against which it was *objected*, That it was null, bearing "only poinding at the cross by a rip or parcel of corn, and pricing the bolls with the fodder;" but bearing nothing, "that the messenger choosed a skilful caster for proofing the corns upon oath, and that either party was allowed to see the proof casten and measured.

And therefore the LORDS found the execution null and admitted the quantities and prices to the party's oath *in litem*; but ordained the fiars likewise to be produced, that thereby they might tax the price if the oath were exorbitant, and likewise would tax the quantities by the testimonies of the witnesses adduced by the pursuer, if his oath as to the quantities seemed exorbitant.

*Fcl. Dic. v. 2. p. 92. Stair, v. 2. p. 723.*

No 29.

A poinding found null, because the execution bore not that the messenger had appointed a sworn tasker to cast the corns, and to thresh and measure the proof at the sight of both parties.

1682. November 21.

STRAITON against PRESTON.

IN an action of spuilzie pursued by Straiton against Preston for poinding of labouring goods in labouring time; the LORDS found these two defences *sepa-*

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