

1698. February 15. SMETON and HEPBURN against Bailie BRAND.

No 40.

PHILIPHAUGH reported Smeton, Hepburn, and Bailie Brand. It was an objection against the formality of the poinding of a copper cauldron, that it was not carried to the market-cross to be appretiate there. *Alleged*, They had done the equivalent, in carrying a symbol, and a part of itself viz. its ledges to the cross; and in such bulky moveables that is sufficient, as in a salt-pan, the symbol is a nail or two of it; in hangings, one piece is sufficient for the whole. Yet the symbol is not always homogeneous, for a wisp of straw, as their food, serves for a flock of sheep. THE LORDS found the poinding lawful, the symbol being proved to have been adhibited.

*Fol. Dic. v. 2. p. 92. Fountainhall, v. 1. p. 824.*

1698. December 22.

CATHCART against PATON.

No 41.

Found contrary to Hays against Strachan, No 36. p. 10522., as to inchoate poinding.

THERE is a competition betwixt Thomas Cathcart, Bailie of Ayr, and Mr Robert Paton minister at Barnwell, about the corns of one Reid their debtor. Cathcart poinded the corns standing in the stooks in August and September 1698, and carried a rip of them to the market-cross. Paton, for his year's stipend and some preceding rests, poinds them ere they be threshen, and carries away as much as will answer the teind; and *alleged*, The first poinding not being completed by casting the corns to a proof, there was nothing to impede him from poinding them again for his stipend, seeing *decimæ debentur parochæ*. *Answered* for Cathcart, This was a plain spuilzie, seeing the property of the corns was fully conveyed by my poinding prior to yours, and I could do no more. *Replied*, Your inchoate diligence could never hinder me to poind; neither was there any thing intimated to put me *in mala fide*, and my debt is privileged, being *debitum fructuum*. THE LORDS found no spuilzie, but that the minister had right to retain, in so far as extended to Reid the common debtor his propotion of a year's stipend, but not for any bygones preceding, and that he must restore the superplus.

*Fol. Dic. v. 2. p. 95. Fountainhall, v. 2. p. 28.*

1703. July 20. THOMAS LAWSON against ROBERT BROWN of Bishoptoun.

No 42.

Found that altho' there were other goods, and no search for them, yet a poinding of plough-goods, in labouring

LAWSON being debtor to Bishoptoun in a sum of money, he poinds some horses. Lawson raises a summons of spuilzie. The defence proponed was, Lawfully poinded. *Answered*, They were plough-goods in labouring time, and so by the 98th act 1503 were not poindable, the instruments of agriculture being excemed from legal execution, both by the Mosaical law and the Roman. *Re-*