

1558. *January 24.* JOHN TURNER *against* HECTOR BLACKADER.

It is to wit, that ane howe passand fra ony man's place to his coil-heuch, to carry and fetch hame coillis, may be poindit and comprisit for debt, or for ony decrete obtenit aganis him befoir ane judge.

Fol. Dic. v. 2. p. 95. Balfour, p. 400.

No 5.

1560. *February 12.* JOHN CRICHTON of Strathurd *against* N.

NA man may poind his tenent for thé arriage and by-run maillis, bot for thre termis allanerlie, immediatlie preceding the time of the poinding, except he have the decrete and authoritie of ane judge thairto.

Fol. Dic. v. 2. p. 94. Balfour, No 10. p. 398.

No 6.

1564. *July 14.*

HAMILTONS *against* The SHERIFF-DEPUTE OF PERTHSHIRE.

ANENT the action pursued by John and William Hamiltons, sons to the Lady Stenhouse, and John Anderson burgess of Edinburgh, and Andrew Sands dwelling in the Blair, against the Sheriff-depute of Perth, and the Sheriff-officer of the same, and Peter Cochrane and others, for the spoliation of certain goods from the said pursuers; it was *alleged* by the said Sheriff-officer and the said Peter and the rest of the defenders, That the goods alleged to be spuilzied by them were taken and apprehended by them upon the ground pertaining to the said Lady, for execution of a debt given against her at the instance of the said Peter Cochrane; and so the said Sheriff-depute-officer, and the said Peter Cochrane, and the rest of the said defenders, who were but witnesses of the said officer in execution of his office, and therefore they did no wrong nor spuilzie. It was *alleged*, That the goods spuilzied pertained no way to the said Lady, but allenary to the said pursuers, resting as their own proper goods; and the allegiance of the said defenders was direct contrary to the pursuer's libel; and more attour it was *alleged* by the said Anderson and the said Sands, That in the time of the apprehension of the said goods by the said officer, and before the apprising thereof or delivering of them to the party, they came to the said Sheriff-depute-officer; and alleged, that a part of the said goods was their proper goods, being in their possession the time of the taking thereof, and certain space before; and offered them to make faith and proof thereupon, according to the law and practice, desiring the same goods to be delivered to them, the which the said Sheriff-depute-officer refused to do; upon the which the said

No 7.

If the party to whom goods belong, which are about to be poinded as the property of another, appear and claim them, it will be spuilzie if they are poinded; but if he do not appear at the time, it will not be spuilzie; there will only be action simply for restoration.

No 7.

pursuers took instruments. It was *alleged* by the said defenders, That albeit that had been of verity, they could have asked no more but the principal goods again, or the avail thereof, and not the profits of the same, as it were not a spuilzie. It was found by the LORDS, by their interlocutor, That in respect of the said Anderson and Sand's allegiance, that the saids defenders be condemned in a spuilzie, and to restore the saids goods with the profits thereof to the saids pursuers, according to a decret of spuilzie; and as to the goods pursued by the said John and William Hamiltons, it was ordained, that the principal goods which pertained to them be delivered to them, or the avail thereof without any profit, because none compeared before the said Sheriff-depute nor officer fore-said, before the apprising and delivering thereof to the party, that the goods pertained to the saids pursuers.

Fol. Dic. v. 2. p. 93. Maitland, MS. p. 151.

1569. February 8.

SPENCE against LD ANSTRUTHER.

No 8.

Tenants who
are in arrear
might be
poinded for
their land-
lord's debt.

ANENT the decret of spuilzie obtained by Elias Spence, burges of Cupar, against the Laird of Anstruther, and letters of poinding direct thereupon, and by virtue of the said letters, poinded certain farmers of the said Laird, that were debtors to him of certain sums; the said Laird called the said Elias before the Lords, for suspending the said letters, because they might not poind his debtors, so long as he had lands and gear of his own. It was *alleged* by the said Elias, That he might poind the farmers for the farms owing to the said Laird, because farm came not under the name of debts, because the said Laird might have come to the saids tenants' barn-yards or barns, and threshen out so much of the corns of the tenants at his own hand, without any process farther, and taken payment of his own farm, and by right receive it as his own gear, and like other which behoved to bide a process; which allegiance of the said Elias was admitted by the Lords, and found, that he might poind the saids farmers for the quantity of their farms, if the same was not paid before the poinding.

In the same action, and letters passed thereupon, it was *alleged* by the said Laird Anstruther, that the said Elias might not poind the saids tenants, because diverse of his sons were infest in the saids lands heritably before the committing of the said spuilzie; and to verify the same, produced infestments of sasine. It was *alleged*, He might poind the saids tenants, notwithstanding the said Laird's allegiance, because the said sasines were given to his sons *titulo lucrativo*, and after the form of the charters to be made, which was in fraud of the creditor; and to verify the same, the said Elias took in hand to prove, that after the date of the said sasines, the Laird intromitted with the hail farms of the said lands from the said tenants to his use, and dispoind thereon at his own pleasure continually after the saids sasines; which allegiance of the said Elias was found relevant, and admitted to his probation.

Fol. Dic. v. 2. p. 93. Maitland, MS. p. 193.