

prothecals, where the clerk of burghs or notaries are dead. This was in the town books of Glasgow.

No 14.

Act. *Cunningham.*Alt. *Frazer.**Fol. Dic. v. 1. p. 210. Durie, p. 287.*1629. *January 22.* MASTERTON *against* ROBERTSON.

AN exception of pointing was sustained to elide an action of spuilzie, albeit the goods were intromitted with by the defender at his own hand, by the space of three hours before the officer who pointed, or entered to an act of pointing; and also, albeit the Sheriff who directed the precept of pointing was not in office, nor Sheriff at the time when the precept was execute, but that the time of the pointing there was another Sheriff; which was not respected, but was found that a precept direct by a Sheriff before, albeit not execute so long as he was in office, yet might be execute thereafter in the time of the next succeeding Sheriff, without any new precept to be directed by him, for that would put the subjects to unnecessary charges; and there was two years almost betwixt the date of the precept and the time of the execution; yet the same was nevertheless sustained.

No 15.

An exception of lawful pointing was sustained to elide an action of spuilzie, although the Sheriff who directed the precept of pointing was now two years out of office, and another in his place. The Lords found no necessity to put the lieges to the charges of a new precept, in such a case.

Act. ———.

Alt. *Nairn.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 210. Durie, p. 416.*

* * Spottiswood reports the same case, calling the parties Robertson against Myrton:

ALEXAMDER ROBERTSON convened Alexander Myrton for spoliation of 27 wedders.—*Alleged*, No spuilzie, because he only assisted the officer in pointing of the wedders by virtue of a sentence.—*Replied*, The pointing was not lawful, because the precept was direct by the Laird of Bonniton, being then Sheriff; and it was not execute till he was out of his office, which could not be.—*Duplicated*, No necessity to raise new precepts in the new Sheriff's name, where they are changed yearly. It is true that the prince, *qui est fons jurisdictionis*, being altered, *cessat jurisdictio*; but to say when a Sheriff cedeth his place to another, that his precept expireth, the King living, is absurd. Many of the LORDS found the exception only relevant to elide the spuilzie, but not for wrongous intromission and restitution of the goods, in respect of the reply; yet the most part sustained the exception even against wrongous intromission.

Spottiswood, (SHERIFF.) p. 311.