

No 23.

to the ground of the land where the goods were carried, and there did offer to make faith, that the goods belonged to him, and not to the debtor, for whose debts they were poinded. It was *answered*, That any offer to make faith was not *debito tempore*, the poinding, and whole executions thereupon, being complete.—THE LORDS assoilzied from the spuilzie; and found, that the goods being carried to the Market Cross, and apprised for the debt, before any offer to make faith that they belonged to another, were lawfully poinded, and could not be liable to a spuilzie; reserving, by an ordinary action, *rei vindicationem*.

Gosford, MS. No 776. p. 486.

1675. July 14.

VISCOUNT STORMONTH *against* ANDERSONS.

No 24.
Poinding of any goods, on the land, to whomsoever belonging, for the feu-duty, sustained.

JOHN MERCER being a feuar of the Viscount of Stormonth's, disposed a part of his crop to Andersons, which was delivered and carried to another barn-yard. Stormonth's chamberlain having obtained decreet for poinding of the ground against Mercer for the feu-duties, did thereupon poind these corns delivered to Andersons, whereupon they obtained decreet of spuilzie before the Sheriff, which now is craved to be reduced; because, the superior might warrantably poind whatever he found upon the vassal's feu-land for his feu-duty, which is *debitum fundi*, but much more the crop of the feu-lands, which are hypothecated for the feu-duties: It was *answered*, *imo*, That there were sufficient goods upon the ground besides those that were disposed and delivered, and that they were carried to another ground. It was *replied*, That the other ground was a part of the lands liable to the same feu-duty, and whatever might have been pretended, if the buyers had compeared, and offered to make faith that the corns were theirs, and shown other moveables poindable; no such thing being done, the superior might warrantably poind any part of the goods, upon any part of the feu-lands, for the feu-duty:

Which the LORDS found relevant.

Stair, v. 2. p. 346.

1676. February 10.

DUNCAN *against* KIDS.

No 25.
If cattle poinded for trespass are used by the poinder, and not put in a poind-fold, it is spuilzie.

PATRICK DUNCAN pursues a spuilzie of a horse against Patrick and William Kids, who *alleged*, Absolvitor; because they found the horse pasturing upon their grass, and did, therefore, poind the horse, till the skaith was paid, and offered him back within 48 hours, upon payment of 40 shillings for the skaith.

THE LORDS repelled the defence, unless it were proponed in these terms, that the horse being found upon the property, and in the skaith of master or tenant