

- No. 64. the term, the cautioner registered his bond of relief, and obtained a precept of poinding from the Bailies of Edinburgh, which he put in execution. Upon this poinding, unwarrantable in respect the obligation to pay was conceived in favour of the creditor, not of the cautioner, the common debtor intended an action of spuilzie, and the question was, whether the precept of poinding was not a colourable title to defend from the penal consequences of the action. This debated, but not finally determined. See APPENDIX.

Fol. Dic. v. 2. p. 392.

SECT. VII.

Command or Authority of a Superior.

- No. 65. 1528. *February 20.* THOMAS SCOT *against* THOMAS BALFOUR of Burlie.
 Gif ony man be persewit for spuilzie or ejection, he aucht and sould be assoilziet thairfra, gif he did nathing thairintill bot be virtue of our soverane Lord's letteris.

Balfour, p. 471.

- No. 66. 1533. *March 20.* MARGARET HOME *against* THOMAS PORTEOUS.
 Gif ony man, beand callit for spuilzie of ony gudis and geir, alledgis and preivis that he poindit the samin, as officiar, or at the command of the lord of the ground, for the maillis and dewties thairof, he aucht and sould be assoilzeit anent all spoliatioun, except he quha is poindit alledge and preive, that he had maid full payment of the saidis maillis befor the time of the poinding.

Balfour, p. 471.

- No. 67. 1534. *February 4.* TENANTS of STRATHURD *against* NINIAN SEYTOUN.
 Gif ony man, beand persewit for spuilzie of ony gudis and geir, alledgis that he lauchfullie poindit the saidis gudis, and thairfoir did na wrang nor spuilzie, the samin sould be admittit to his probation.

Balfour, p. 471.