

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 dispoined 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.