

1628. February 1.

LD HALKERTON *against* KADIE.

AN offer to prove against the suit of deforcement, that the goods pertained to another, without that person's offer to make faith at the time of the poinding, was not sustained as relevant to purge the deforcement.—The like found as to another exception, viz. that the master and his servants had stopped the poinding of the tenant's corn for the tenant's own debts, in regard, the master's rent was resting, this not having been proponed at the poinding; which if it had, the poinder might perhaps have offered security to the master for the rent.

*Fol. Dic. v. 2. p. 93. Durie.*

\* \* \* This case is No 3. p. 3426.; *voce* DEFORCEMENT.

No 14.

1628. February 23.

L. GAGIE *against* GUTHRIE.

In a suspension betwixt L. Gagie and Guthrie, the suspender suspending upon a poinding for a part of the sums charged for, and alleging further, that the goods poinded were worth greater sums of money than they were appraised for, and were set down in the poinding; likeas before the poinding, the party from whom the same were poinded offered to the party at whose instance they were poinded greater sums of money for the same than the said prices whereto they were appraised, upon the which particular sum offered he was special, and the charger opposing his poinding thereto, in the which the prices were estimated by the apprisers, against which no contrary probation could be received; the LORDS not the less of the said poinding and prices therein appraised, found the offer of a greater price really offered to the party poinder, and made upon the ground, albeit before the act of the comprising and estimation of the prices by the apprisers, to be relevant, to be proven by the oath of the party poinder, notwithstanding of the poinding containing less prices.

*Act. Nicolson.*

*Alt. ———.*

*Clerk, Hay.*

*Fol. Dic. v. 2. p. 95. Durie, p. 350.*

\* \* \* Auchinleck reports this case :

A MESSENGER poinds certain goods and gear. The party owner of the gear offers to the party poinder before the gear be taken to the market-cross, a certain price. The offer is refused; and thereafter the goods are comprised for a less sum than was offered. The party poinder *alleged*, That the gear should be allowed for as much as was offered for it. The defender *alleges*, That he could not accept the offer before the poinding. THE LORDS found the offer was sufficient, *quocunque tempore*, either before or after the poinding.

*Auchinleck, MS. p. 159.*

No 15.

Poinder liable to account only for the sum at which the goods are comprised, unless more has been offered.