

MULTIPLE-POINDING.

1624. July 2.

WATSON *against* LORD KINCLEVIN.

IN a double poinding, raised by certain tenants against one Watson a minister on the one part, and the Lord Kinclavin on the other, the Lord Kinclavin being out of the country the time of the citation, and not summoned upon threescore days, and therefore, it being *alleged*, that no process could be given against him, upon that summons; the LORDS took this order, that in all the like cases of double poinding, and suspensions, where any of the parties therein are not in the country, and are not summoned upon threescore days, and so are not ready, but refuse to dispute upon their rights, that they will sustain the process, and discuss the rights of the parties compearing; with this provision, that the party who shall be decerned to be answered and obeyed, shall be bound, and find soverty to that effect, if need be, to refund what he shall recover by that sentence, to the party out of the country, if it shall be found that he has better right to that which is controverted, than the party who then in his absence is decerned to be answered.

Clerk, Hay.

Fol. Dic. v. 1. p. 593. Durie, p. 135.

No 1.
If parties called in a multiple-poinding were out of the country, the cause went on notwithstanding, but the party obtaining preference, was required to find caution to repeat.

1630. January 14.

BRUCE *against* WARDLAW.

IN a double poinding, the tenants suspenders having passed, by a warrant subscribed by them, from that double poinding; and thereafter giving warrant to insist therein, and at last passing therefrom, the LORDS found, nevertheless, that they would sustain process in the cause betwixt the two parties anent their rights, seeing they had both compeared and produced, and seen others rights; after which, albeit the suspenders in a double poinding should not insist, but pass from their instance, yet the parties ought to be discussed; and if

No 2.

No 2. the one party would not dispute, that the other party should have sentence upon his right, even as if the suspender had insisted for declaring his preference in his right.

Act. *Nicolson.*

Alt. —

Clerk, *Gibson.*

The like was done December 20. 1642, in a double poinding betwixt Lady Cowfield and the Lady Bancriff, where Stuart was for the one party, and Oliphant for the other.

Clerk, *Hay.**Fol. Dic. v. 1. p. 593. Durie, p. 480.*

No 3. 1632. December 12. BROWN against LOTHIAN.

WHEN a suspension of double poinding is raised by any, the suspender thereof may not pass therefrom in prejudice of any of the parties by whom he allegeth himself to be troubled; and though he would do it, yet the parties may crave their rights to be discussed, which the LORDS will grant.

Fol. Dic. v. 1. p. 593. Spottiswood, (SUSPENSION.) p. 325.

No 4.

By act 3d, Parl. 1584, the preferable creditor who neglects to appear in a multiple-poinding when lawfully cited, and allows a degree of preference to go out in favour of others, shall, in a reduction, have no claim for rents, &c. intromitted with *medio tempore* by the other party, but only for the *rents*; at the same time, if any rents or annualrents remain unapprehended, these will belong to the prefer-

1678. February 27. CAMPBELL, &c. against BAIN, &c.

ONE M'Millan, a drover, having bought cattle from Sir James M'Donald, and his son Donald M'Donald, he did grant two bonds for the price, one to Sir James, and the other to Donald, in both which, the name of Mr John Bain of Pitcairly being contained as creditor, he charged M'Millan, who suspended on double poinding; and in discussing of the suspension, compearance was made for some creditors of Sir James and Donald M'Donald, who arrested the sums in M'Millan's hands, as being due to Sir James and Donald M'Donald their debtors, and did offer to prove by Mr John Bain's oath, that the bond was blank *ab initio*, in the hands and power of Sir James and Donald M'Donalds, and before his name was filled up, they did arrest; whereupon he did depone, that the bond granted to Donald M'Donald was blank in the creditor's name *ab initio*, and that his name was not filled up till such a day, which was after the arrestments. But as to Sir James M'Donald's bond, he deponed, that he had reason to believe his name was filled up in it *ab initio*, in satisfaction of a debt due to him by Sir James, and that Sir James had so written to him.—
“THE LORDS having advised the oath, found that it proved the reason as to Donald's bond, and therefore preferred the arresters; but found, that it proved not the reason as to Sir James's bond, and therefore preferred Pitcairly, albeit the bond was not delivered to him till after the arrestments; and found, that