

1676. *February.*

ANENT POINDING.

I HAVE heard it maintained, that poinded goods, especially if they be a dead poind, that puts the creditor poinder to no charge or expence in keeping it, ought to be kept 24 hours ere they can be appraised at the market-cross, to wait if the debtor will come and relieve it, *medio tempore*, by payment of the sum for which it was poinded; and I hear the custom of Edinburgh is to apprise them three several market-days, before the creditor has an absolute right to them. (The act 2d in 1669 allows what is poinded for deficiency in out-reiking the militia, may be redeemed for six days after.) Yea, I have heard some go a greater length, to affirm, that for 24 hours after the apprising is past, the debtor may still, upon payment, redeem his own goods; which, if true, is undoubtedly introduced *humanitatis gratia*: so that though, by the apprising at the market-cross, the creditor becomes *dominus* of the appraised goods, yet it is a sort of *dominium revocabile* from him for 24 hours after. But I hardly think this *laxamentum temporis* would be indulged to a third party who offers, after the apprising at the market-cross is past, to come and make faith the goods are his, as having right to them by disposition, or as landlord, *jure hypothecæ*, but rather that he will be totally secluded. *Vide Feb. 1680.*

Advocates' MS. No. 465, § 2, folio 240.

1676. *February.*

THURSTON'S CREDITORS COMPETING.

THE Lords, in February, 1676, determined in the case of *George Lawson, Bailie Carmichell, Captain Alison*, and other creditors of Thurston, competing on the priority of their diligences, that one who has a decreet for poinding of the ground, upon an infestment of annualrent, can poind for no more than the tenant's year's rent, or what he is then owing to his master. Which, as it is most equitable towards the preservation of poor tenants from being harassed, herried, and for encouragement of labourers of the ground; so it is in effect no more than what is enjoined by the 36th act in 1469, discharging them to be distressed beyond a term's mail: and though the tract of decisions ran for a long time, that the said act of Parliament intended only to regulate poindings on personal debts owing by the master of the ground, but did not extend to, nor concern poinding upon a real right and infestment; the nature whereof carried to the first and readiest of all was upon the ground, without regard what the possessors were owing resting to their master, or if the goods poinded were truly theirs, or belonging to other men, and there only a-grazing or casually; and this aye and while the poinder's annualrent was paid. See this *in terminis* found in Dury, 11th July, 1628, *Lady Ednem contra the Laird*. And though strict law may dictate this distinction, yet I think the Lords' resolution in this last case making no difference at all, by far the more equitable and just.

See *alibi*, where the Lords, in July, 1676, preferred the whole other creditors to Bailie Carmichell, because his right was granted by a bankrupt *postquam fugam arripuerat*.

Advocates' MS. No. 465, § 3, folio 240.