

THE LORDS, before answer, allowed the pursuer and his wife to depone upon the quantity and value of the goods poinded, (in respect it was alleged, that some goods were taken away that were not contained in the execution of poinding) reserving the modification of all to the Lords.

No 31.

*Harcarse, (POINDING.) No 751. p. 212.*

1683. *March.*

IRVIN of Hilton *against* The FACTOR of the COLLEGE of ABERDEEN.

THE exception of lawful poinding in a spuilzie being offered to be taken off by an allegiance, that labouring goods were poinded in labouring time; and it being proven, that the usual time of labouring about Aberdeen was after Michaelmas, the 29th September, and the poinding was executed on the 28th, when some of the neighbours had stricken plough, but the pursuer had not begun to till;

No 32.

THE LORDS found, That the poinding was not in labouring time, though some of the country had begun to till. And some of the LORDS were of opinion, that the goods might have been lawfully poinded, even after the 1st of October, though other neighbours had begun to till, unless the poinded goods had been once yoked that year.

*Fol. Dic. v. 2. p. 95. Harcarse, (SPUILZIE.) No 859. p. 244.*

1684. *January.*

JOHN MAUL and Sir JAMES HAY *against* MARGARET HAY.

FOUND that where stacks in yards, or wine in cellars are poinded by symbols, though the execution bear, that the whole quantities were poinded, it is only effectual in so far as may answer to the ground of the poinding; and the superplus doth not belong to the pointer, but he is liable to the other creditors for the value thereof, unless the subject be *unicum corpus*, as a horse, or piece of coin that could not be conveniently divided. And the other creditors may point the superplus goods after the ground of the first poinding is satisfied. And found, that a creditor who had a warrant for poinding, not having made use thereof, but only arrested in the first pointer's hands, a third creditor poinding after the arrestment, was preferable to the arrester, as having used the more habile diligence. For the property of the superplus not being in the person of the first pointer by symbol, he could not be debtor therefor, and so the arrestment took no effect; especially the goods having never been altered or removed out of the common debtor's cellar.

No 33.

*Harcarse, (POINDING.) No 752. p. 212.*