

1684. *February.*M'KEAN *against* M'DOUGALL.

No 34.

Execution
must be spe-
cial as to the
quantities.

JOHN M'KEAN in Backbee, having pursued a spuilzie against Mr John M'Dougall, and it being *alleged*, That the goods were lawfully poinded; *answered*, That the execution of the poinding was null, being only in general terms of the hail corns, cattle, without condescending upon the number and quantities. THE LORDS allowed the defender to adduce the sworn apprisers and taskers who had threschen out the corns and apprised the goods, to prove the quantities of the corns and number of the goods; and in case he did not prove the same, allowed the pursuer his oath *in litem* to prove the quantities and prices of the corns, and number of the goods libelled.

Fol. Dic. v. 2. p. 92. Sir P. Home, MS. No 571.

* * * Harcarse reports this case :

1684. *March.*—The defender, in a process of spuilzie of corns and bestial, having proponed the defence of lawfully poinded;

It was *alleged* for the pursuer, That the appretiation was grossly unjust, in so far as cow and calf were estimated at L. 4. And, *2do*, The corns being apprised by sample, the defender intromitted with the whole stock of the corns, and the quantity is not constituted by the execution; so that the defender ought to prove, by the lot and taskers, what the quantities were, otherwise it ought to be looked on as a spuilzie.

THE LORDS, in respect of the poinding, found not the defender liable in a spuilzie, but ordained him to prove the quantity of the corns poinded by the taskers and tasters to the proof; and he having failed to prove at the day assigned for that effect, the Lords allowed the pursuer *juramentum in litem* as to the quantities and prices.

Harcarse, (SPUILZIE.) No 862. p. 245.

1684. *March.*GOODSIR *against* WEMYSS.

No 35.

A poinding of
plough-goods
was sustained,
unless the
owner would
prove, there
were suffi-
cient other
goods for the
debt and the
rent.

GOODSIR having charged Wemyss for the payment of a debt, and he having suspended upon a reason of compensation, founded upon a decret of spuilzie obtained at his instance against the charger; *answered* for the charger, That the decret of spuilzie being obtained before an inferior court, upon this ground, that the plough-goods were poinded in labouring time, whereas there were corns and other goods upon the ground, which might have been poinded to the value of the debt; it was unjust and unwarrantable, seeing the corns and other goods upon the ground were subject and liable to the master's rent; so that unless it were offered to be proved, that there were as much corns and