

1688. *November.* Mr THOMAS SKENE, Advocate, *against* Lady CARLOURY.

No 38.

MR THOMAS SKENE having executed a poinding for the last year's rent due to the master by his tenant, he gave in a bill to the Lords, craving the use of the debtor's barns for threshing the proof and stock.

*Answered*; *imo*, The poinding was incomplete, in so far as the stacks were not casten to proof, and threshed and measured in presence of the messenger, which should have been done. *2do*, Debtors are not bound to give their barns for threshing the proof, which may be done in the yard; and according to the proof casten and measured upon oath, the creditor must take the stock more or less, and may stack it in the yard, or carry it away at his pleasure, which is the common custom.

*Replied*; The debtor ought to allow the use of his barns, in so far as they are not necessary for his own use; because *malitiis non est indulgendum*. *2do*, Seeing the act of poinding corns by rips may require several days to complete it, the creditor may prepare the way for it, by getting the barns.

THE LORDS waved to advise the point, whether the tenant, debtor, was obliged to furnish his barns, in respect the execution produced bore only poinding at the cross; and therefore found, That the execution of the poinding was not complete, and that the creditor should not have stopped there, but gone on without delay to complete all the solemnities of casting, proofing, and measuring, &c. which might have been expedie in a competent time of one or more days, as the affair required.

*Harcarse*, (POINDING.) No 756. p. 213

1692. *December 7.*

TURNER *against* SCOT.

No 39.

IN the case of Turner and Scot about a spuizie, *alleged*, Lawfully poinded. *Answered*, Not; because they were plough-goods in labouring time. *Replied*, He might point these, by the 98th act 1503, seeing there were no other poindable goods on the ground. *Duplied*, That act discharges their poinding, not only if there be other moveables, but even if the debtor have lands to apprise. THE LORDS found it was so by the act of Parliament, but that it never had been opposed to elide the spuizie of plough-goods; and therefore repelled it as wholly in desuetude. *2do*, *Alleged*, It was still a spuizie, because I intimated a suspension to you at the time of the poinding, and you was with the messenger. *Answered*, You held up a paper, which you called a suspension; and I offer to prove *alibi*. THE LORDS preferred the pursuer to the probation, viz. that he offered or shewed the suspension, and that this defender was then with the messenger.

*Fol. Dic. v. 2. p. 94. Fountainhall, v. 1. p. 528.*