

1620. December 12.

WILLIAM HERDMAN *against* WILLIAM WALLWOOD, Messenger in Dunfermline.

He pursues the messenger for spuilzie of a cow. *Excepted*, Absolvitor; because he poinded her lawfully upon a sentence. *Replied*, The pursuer offered the sums poinded for, before the spuilzie, and in respect of refusal consigned. *Duplied*, The defender being an officer, was in *bona fide* to poind, not being discharged by the suspension.

15th December 1620. Repells the exception in respect of the reply, quhilk admits with the summons.

*Alleged*, No process, because the spuilzie libelled is in May, and the summons raised in June, and the space short, and the defender an officer, who is content to exhibit the prices of the goods libelled.—16th December. Ordains him to produce the prices at the bar; and declares, they will assoilzie him.

Act. *Foulis*.Alt. *Mowat*.Fol. *Dic.* v. 2. p. 92. *Nicolson, MS.* No 572. p. 396.

No 9.

1623. December 3.

A. *against* B.

In a pursuit for spuilzie of goods, an exception being admitted against that action, founded upon the poinding of the goods libelled, and the exception being found proved; the LORDS ordained the defender to deliver to the pursuer the surplus of the prices of the said spuilzied goods, to the which the same was comprised more than the debt for the which the same was so comprised, seeing the poinding bore all the goods to have been delivered by the messengers and officer comprisers to the party defender, at whose instance the same was comprised, and so that of reason he ought to render back the overplus, himself being paid. And this was ordained to be done in this same process of spuilzie; and would not find any necessity to put the pursuer to seek the same by any new process from the defender.

Act. *Cunningham*.Alt. *Belsbes*.Clerk, *Gibson*.*Durie*, p. 85.

No 10.

1624. March 25.

HEPBURN *against* LAYNING.

WHERE the LORDS fand a reply, bearand that the goods alleged poinded in the exception were pleugh goods, viz. drawing oxen and drawing kyne, and that there were other of the pursuer's goods poindable upon the ground, viz. horse, sheep, and corns, equivalent to the sum, relevant against an exception of poinding.

Clerk, *Durie*.Fol. *Dic.* v. 2. p. 94. *Nicolson, MS.* p. 393.

No 11.