

before the poinding, the pursuer's bear-land was completely tilled, sown, and harrowed, so that the time of labouring ceased, and so that the act of Parliament had no place in this case; this duply and the poinding was sustained, notwithstanding of the reply and act of Parliament, and notwithstanding that the pursuer's summons and reply bore and expressed, and the pursuer offered to prove, that the goods were taken away that same day, immediately when they were loosed out of the plough, being the 10th of May; which was not respected; for the LORDS found, that they might lawfully be poinded that same day after the ploughing, if that same day before they were poinded the labouring was outred; neither was it respected, that the pursuer might have had *fauchin* to till after the bear-seed was ended.

*Fol. Dic. v. 2. p. 94. Durie, p. 399.*

\*.\* Auchinleck reports this case:

Plough goods may be poinded that same day the bear-seed is ended, and tilling, sowing, and harrowing, for that year, perfected.

*Auchinleck, MS. p. 160.*

\*.\* This case is also reported by Spottiswood:

WATSON pursued Reid for spoliation of certain horses and oxen. *Alleged*, That he poinded them lawfully, by virtue of a sentence recovered against the pursuer. *Replied*, He could not cloath himself so; because, the spoliation was the 8th of May, in time of labouring, during which they could not be poinded. they being plough goods, wherewith the pursuer actually laboured his land. *Duplied*, He offered to prove, that the pursuer had done with all his labouring before the alleged spoliation.—THE LORDS sustained the exception and duply.

*Spottiswood, (EJECTION, &c.) p. 94.*

1629. January 22.

A. against B.

If goods be poinded, and suffered to remain in the possession of the debtor, he deceasing, another creditor pursues the defunct's relict, as intromitter with the defunct's goods and gear, intromitted with by her, he may not allege, that it was gear poinded by \_\_\_\_\_ before her husband's decease, and only suffered by the said \_\_\_\_\_, who poinded the same, to remain in his house, under his tolerancé; because a tolerance presumes a transaction.

No 18.

*Auchinleck, MS. p. 160.*