

No. 74. replied, That John was released from the horn, and suspended the decret, after the entry, which was in August, 1611, and also thereafter shore the corns, stacked the corns, and was in possession thereof for months thereafter, till February, and that, during the dependence of the suspension, it was not lawful to my Lord to meddle with the corns,—the Lords sustained the meddling therewith lawful.

Kerse MS. Fol. 198.

1633. *June 24.*

DICKSON *against* HALLIDAYS.

No. 75.
An irregular order of a Judge no defence to the assistants of officers illegally pointing in consequence of it.

Robert Dickson pursues spuilzie of certain ewes against Hallidays, who alleging, that they could not be convened as spuilziers, because they were only comprisers of the goods libelled, and assisted the officers only to comprise the same, in execution of their office, who, by virtue of two sentences, recovered before the Stewart of the Earldom of March, against this pursuer, for blood committed by him, wherein he was decerned in the unlaw of fifty pounds, for ilk one of the two bloods done by him, the said goods were lawfully pointed, and therefore this was sufficient to absolve the comprisers, who had no further meddling; and the pursuer replying, that these decreets cannot be warrant to excuse the excipients, whereupon any pointing could be executed, seeing the same are not given upon any lawful trial, by an assize, or else the party's own confession, without which, no sentence for blood and unlaw thereof, could have been given, but the most the Judge could do, was to unlaw the party for contumacy, and not as convicted in the blood, and the Judge could no otherwise proceed; attour the pursuer is not subject to that jurisdiction, seeing he dwells not within the stewartry, but within the Bailliary of Melrose;—and the defenders alledging that the decret stands, and bears, that this pursuer was present, and would not give his oath, therefore the Judge decerned against him; likeas this is not the place to dispute the nullity thereof, specially to these defenders, who are not the principal parties in these sentences, but are only here convened as spuilziers, which they ought to be freed of, as said is, in respect of the said sentences, and the officer's executions of pointing, which they allenarly assisted, as said is; notwithstanding of which exception, the Lords sustained the spuilzie against them (for there was no other person called in this action, but only they) and repelled their allegiance; for the said decret was not found a ground whereupon pointing could be lawfully executed against the pursuer, he neither being convicted of the blood, nor confessing it; for his compearance and refusing to give his oath, was not a sufficient reason to infer such a sentence of conviction, and so could not defend these defenders, albeit they were only comprisers, seeing it could not defend the obtainer of the sentence, and so he could not lawfully point; but the Lords reserved the modification after probation to themselves. The like done betwixt Robert Winraham and a wife in Leith.

Act. *Craig.*

Alt. *Belshes.*

For the Pursuer, *Baird.*

Clerk, *Gibson.*

Durie, p. 691.