

No 208. 1663. January 8. MURRAY against HUNTER.

A PRECEPT of poinding being unwarrantably executed *extra territorium*, it was not found sufficient to infer a spuilzie against the employer, unless it were proved by the oaths of the messenger and defender's servants, employed by him to go along with the messenger as assistants, that they had express command so to do.

Fol. Dic. v. 2. p. 229. Stair.

*** This case is No 281. p. 11611. *voce* PRESUMPTION.

No 209.

A party put a horse into a stable, with orders to feed him in a certain manner in stable. He was put to grass, and lost. The order found probable *prout de jure*.

1667. January 29. HERCULES SCOTT against JOHN GIBB.

IN July last the said Hercules Scott did put in a horse in the said John Gibb's stable, in Burntisland, being a common stable, and did order the said John that he should not suffer his horse to go out to the grass, but that he should keep him in at the hard meat until he should return from Edinburgh. Notwithstanding whereof, the said John did put out the said horse to the grass, with his head and foot tied together, and did put him to pasture on the Craigs of Burntisland, where he fell and broke his neck. The said Hercules intents action against the said John Gibbs, for delivery of the said horse price, extending to 300 merks. That which was in question most was the order, the defender alleging the same was only probable *scripto*. But the LORDS found otherwise, that his order, *in hoc casu*, was probable *prout de jure*, but reserved modification to themselves at the advising of the cause.

Fol. Dic. v. 2. p. 229. Newbyth, MS. p. 89.

*** Stair reports this case :

HERCULES SCOTT having given his horse to John Gibb, stabler in Burntisland, to be kept, pursues Gibb for the price of his horse. The defender *alleged* absolutor, because he having put out the horse to the grass, it being in the month of July, the horse fell over a rock and broke his neck, and the defender is not liable *pro casu fortuito*. It was *answered*, That the accident was by the defender's fault, because he put the horse to grassing above the Craigs of Burntisland, and caused tie his head and feet together. *2do*, It is offered to be proved by witnesses, that the pursuer directed him to keep the horse in the stable at hard meat, and not to put him out to grass. The defender *answered*, That he was not *in culpa*, because he had put out the horse in a place where ordinarily other horses were put out, and had tied him no other way than the rest of the horses.