

\*\*\* Fountainhall reports this case:

WOOD pursues Stuart for a spuilzie of labouring horses. *Alleged, 1mo*, His labouring was only of some few burrow acres, which was not to be till January, and this poinding was in December; *2do*, There was then a great frost, and so no labouring; *3tio*, Six horses were too many, and so he might only poind some of them.

Fountainhall, MS.

No 27.

1678. July 19.

TILlicOUNTRY against L. ROLLO.

IN a case between Tillicoultry and L. Rollo, the LORDS found a bond wanting witnesses could not be adminiculate nor made up by extraneous witnesses. *2do*, Where the penalty in a bond was left blank, and the said blank scored, the LORDS refused to modify any expenses, but assoilzied altogether therefrom. *3tio*, A man may cause poind goods of his debtor's that are in his own custody, and that for debt owing to him by the debtor.

Fountainhall, v. 1. p. 10.

No 28.

1679. December 13.

HAY against HAY.

HAY of Kirkland pursues Patrick Hay for spuilzieing of his corns and two barn-yards, wherein lawful poinding being sustained, by way of defence, an execution of the poinding was produced, against which it was *objected*, That it was null, bearing "only poinding at the cross by a rip or parcel of corn, and pricing the bolls with the fodder;" but bearing nothing, "that the messenger choosed a skilful caster for proofing the corns upon oath, and that either party was allowed to see the proof casten and measured.

And therefore the LORDS found the execution null and admitted the quantities and prices to the party's oath *in litem*; but ordained the fiars likewise to be produced, that thereby they might tax the price if the oath were exorbitant, and likewise would tax the quantities by the testimonies of the witnesses aduced by the pursuer, if his oath as to the quantities seemed exorbitant.

*Fcl. Dic. v. 2. p. 92. Stair, v. 2. p. 723.*

No 29.

A poinding found null, because the execution bore not that the messenger had appointed a sworn tasker to cast the corns, and to thresh and measure the proof at the sight of both parties.

1682. November 21.

STRAITON against PRESTON.

IN an action of spuilzie pursued by Straiton against Preston for poinding of labouring goods in labouring time; the LORDS found these two defences *sepa-*

No 30.