

letters of open doors, not being able to get access by reason of steiked and lock-fast doors; that a messenger, in poinding corn in a barn-yard, about 34 years ago, entered to the yard by stile or steps, the gate of the yard being padlocked; that he took out rips or samples of corn; but, before the corns themselves were taken away, letters of open doors were obtained; that it appeared from the signet-records, that seven letters of open doors had been issued from August 1765, to June 1766, relative to opening shops, cellars, office-houses, a lime or coach-house, and chests or casements.

The defenders, though they acknowledged they had not discovered any case precisely similar, averred, that the most reputable messengers had agreed that they would not have hesitated to execute this poinding, in the way and manner it was done, without letters of open doors; that it is their practice, in executions of poinding, to enter into any place to which they have access without violence, or breaking open steiked or lock-fast doors; and that, though the door, by which they mean to enter, be shut, but not locked, if the impediment which keeps it close can be removed, without breaking or demolishing the door, such impediment is not considered as requiring letters of open doors.

THE LORDS sustained the defence against this action, and assoilzied the defenders; and, upon a reclaiming petition, adhered.

Act. Rae. Alt. Lockhart. Clerk, Ross.
P. C. Fol. Dic. v. 4. p. 82. Fac. Col. No 86. p. 152.

1773. February.

FOUND, that a poinding on an act of warding might be executed more than a year after the charge.—See APPENDIX.

Fol. Dic. v. 4. p. 81.

1775. August 4. DANIEL MITCHELL against WILLIAM GILLIES.

IN an action of restitution at the instance of a prior against a subsequent pointer of a tenant's stocking, which, it was proved, were, soon after the first poinding, returned into the possession of the debtor, who continued in the farm as formerly, apparently tenant of the farm, and owner of the stocking, though the pursuer alleged there was a written agreement as to both between the debtor and him, which, however, he could not produce, alleging it was lost; and, where the *fama consentiens vicini*, that this was a contrivance, by poinding on a fictitious bill, to disappoint the defender, and the tenant's other creditors, was fortified by the proof led; and the Court being of opinion, that, in those circumstances, poinding, which is a legal disposition, could have no stronger effect than a voluntary one, *retenta possessione*;

THE LORDS assoilzied the defender.

Act. Geo. Buchan-Hepburn. Alt. M'Laurin. Clerk, Pringle.
Fac. Col. No 193. p. 126.

No 53.

No 54.

No 55.