

1787. *August 2.* RICHARD HOTCHKIS *against* JAMES EYRE.

## No 56.

A poinding commenced within the head burgh of a shire, must be completed at the market-cross of the burgh.

IN executing a poinding of effects, found in the New Town of Edinburgh, the messenger employed by James Eyre, apprised them the second time at the market-cross of Canongate, instead of that of the burgh.

His reason for this procedure was expressed in the execution, 'That the new bridge being then impassible with carts, on account of some repairs which were carrying on, he found, in the circuit he was thus obliged to make, that the market-cross of Canongate was nearer than that of Edinburgh.'

Richard Hotchkis, as trustee for the other creditors of the person to whom the effects belonged, brought an action for setting aside the poinding as informal; when it was

*Pleaded* in defence; In poindings it was formerly necessary, that the second appretiation should invariably be performed at the market-cross of the head burgh of the shire. This, however, was altered by the statute of 1748, whereby it was, among other things, enacted, 'That it should and might be lawful to carry goods poinded to the nearest market-cross.' By these words must be meant, that market-cross which is most convenient for the completion of the diligence; otherwise this enactment, intended for the accommodation of creditors, would prove a snare to them.

*Answered*; When, by the statute of his late Majesty, creditors were allowed to follow out a poinding, either at the market-cross of the head burgh, or at the nearest market-cross, it never could be intended to authorise the execution of that diligence where-ever it was most agreeable or convenient for the person employed for this purpose. Such an arbitrary power lodged in a messenger would be extremely inexpedient; and it would be equally unjust; because the opportunity which the law has afforded to the unfortunate debtor, of redeeming his effects, even after the second appretiation, might in this manner be frustrated. The present question, however, does not rest on any argument of that sort. It never can be imagined, that a poinding commenced in the head burgh itself may, in consequence of the statute, be completed within a different jurisdiction.

THE LORDS, in general, were of opinion, that the validity of a poinding would not depend on the messenger's having gone to the market-cross which was nearest in a direct line to the place where the effects were discovered. In this case they thought that the statute of Geo. II. was quite inapplicable.

THE LORDS sustained the objection to the formality of the poinding.

Lord Ordinary, Swinton.

Act. *Frazer-Tytler.*

Alt. *Dean of Faculty, Hope.*

Clerk, *Colquhoun.*

C. *Fol. Dic. v. 4. p. 82. Fac. Col. No 345. p. 533.*

Consequences of stopping a poinding; see REPARATION.

Poinding must be gone about with up-sun; see EXECUTION.

See HYPOTHEC.—See APPENDIX.