

No 35. sonal debt contained in the letters of poinding; and therefore reduced the decret of spuilzie.

*P. Falconer, No 83. p. 57.*

1684. *November.*

PATRICK and JOHN HAY *against* STRACHAN and The MINISTER of Dunkeld.

No 36.

FOUND that where two persons poind symbolically by rips of corn, the poinding first consummate by casting, threshing, and measuring, though the other was first inchoate by poinding a rip of corn, and an execution of poinding, bearing, that the goods were appraised on the lands, without mentioning the words *on oatb*) was sustained, in respect it bore, that they were appraised at the market-cross upon oath. Here it was debated, if poinding for the master's debt, before the term of payment of the tenant's rent, could be quarrelled by another creditor of the master's; though it might be stopped by the tenant; and if Whitsunday was not a legal term after which one might poind to complete his diligence, though he leave the corns in the tenants hands till the conventional term of Candlemas, as one may take a decret declaratory, to make forthcoming at the term. See No 41. p. 10524.

*Fol. Dic. v. 2. p. 95. Harcarse, (POINDING.) No 753. p. 213.*

1687. *July 22.* Earl of BREADALBANE, &c. *against* SINCLAIR, &c.

No 37.

THE LORDS advised the action of spuilzie pursued by the Earl of Breadalbane and John Campbell his son, against Sinclair of Dunbaith, Dumbar of Hempriggs, &c. that they had poinded some mares and cows for a debt of Breadalbaine's, though John Campbell had a disposition to them, and appeared at the market-cross of Thurso in Caithness, and offered to depone on the verity of his disposition; which the messenger refused to accept, because, having required him also to depone, whether the said disposition was for onerous causes, (being from a father to his son,) or if it was simulate, only to stop and obviate poindings, he refused to make faith, alleging the messenger had no power to put such interrogatories to parties, but they behoved to be tried in a declarator, reduction, or other ordinary action? THE LORDS found the messenger's refusing to take his oath on the disposition was a spuilzie. But it were fit that the Lords, for clearing the lieges, would determine the point, how far a messenger's power may reach in trying the simulation of all such dispositions produced before them; else all poindings on the production thereof may be stopped. See SPUILZIE.

*Fol. Dic. v. 2. p. 93. Fountainball, v. 1. p. 469.*