

out of the mails and duties of thir lands, Clunie binds him to content and pay yearly to Lesmoir the sum of L.400, as the annualrent of that part of the principal sum warranted by him; and that so long as Clunie should bruik and possess the said wadset lands, by uplifting the mails and duties thereof. *Item*, because immediately upon the decease of the Marquis, Clunie was to enter to the possession of the lands of Scurdarg, Smythston, and others now liferented by the Marquis: Lesmoir obliges him, upon the Marquis his decease, to pay to Clunie L.4000, Clunie then resigning over to him his right he will have to the said lands. With many other mutual clauses and obligements therein. Sir William Dick, *in anno* 1629, sues for payment at Lesmoir; obtains 7000 merks in part of payment of 14,000 merks; whereon he gives him an acquittance (*discharge*,) containing an ample assignation for his relief and warrandice of the rest. This Lesmoir's son is charged in February last, 1663, at the instance of one Hierom Spence, of Brunston, to enter heir to his father within 40 days, conform to the Act of Parliament. He renounces to be heir to his father: whereupon the said Hierom obtains against Lesmoir's estate a decret of adjudication; and so amongst his other rights and securities purchases that right also he had to charge his *correi debendi*, upon that contract, for relieving and warranting him conform thereto. At last the said Hierom assigns and makes over to Lesmoir (who was the very man he had charged, and upon his charge had renounced,) his decret of adjudication. Whereupon as assignee constituted he intents this action, and charges the heirs, as well male, line, tailie, as of provision, both of Clunie and Craig, to make payment to him conform to the said contract passed betwixt their fathers *in anno* 1626. For instructing of all which to the Lords, was produced,—first, That contract or principal appointment; then Sir W. Dick's discharge, bearing an assignation; then that decret of adjudication, with the assignation thereof made to the pursuer; then the charges he gave Clunie and Craig their heirs, to enter heirs to their fathers, with the executions thereof. In respect, whereof, the Lords decerned the defenders to make payment of their respective parts as shall be divided.

*Act. Patrick Fraser.*—It's a decret in absence. *Signet MS. No. 5, folio 1.*

1663. *November 20.* ABERCROMBIE *against* THOMAS RONALD of Woodhill and OTHERS.

THOMAS RONALD of Woodhill, sets in tack and assedation, *in anno* 1657, for 3 or 5 years to come, at the tacksman's option, to Alexander Hewat, the equal half of the lands of Ladinghame's and Gavine's crofts of Blackhall, lying within the parish of Inverurie, and sheriffdom of Aberdein; for payment to be made to him of some 40 merks of tack duty, with some other small casualties. Ronald, *in anno* 1662, obtains decret before the sheriff of Aberdein against Hewat, to make payment to him of the said tack-duty that these 2 years bygone was resting owing unpaid; and, thereupon, gets a precept to Ja. Panton, sheriff-officer, to poind, apprise, and distrenyie his (Hewat's) readiest goods and gear that he had on the crofts of Blackhall. Which the messenger coming to do, the said Hewat produced his

master's discharge for the duty of the said lands, 1659, and all years preceding since his entry : and desired that the messenger would not poind his whole goods ; but for that only which was truly resting, and was contained in the said decret. Which, when the Master's depute was willing to do, Ronald ordained him to proceed in his poinding of the whole, notwithstanding the said discharge, and that he should warrant him ; which he accordingly did : and so finding upon the ground of the said lands, 4 oxen, 4 kye, with 3 followers ; a 2 year old steir, and a quoyack ; he poinded the same, having admitted two burgesses of Inverurie, who, upon oath, apprised ilk ox to L.10, ilk cow to L.8, ilk one of their followers to 10 merks, the quoack and steir to L.8 the piece : offered them to any that would pay the sums contained in the decret. Hewat takes instruments on all this. Then they carried them to the market cross of Aberdeen, and there apprised them to 194 merks money. Where compeared Hewat's son in name of his father, and protested against the apprising of the foresaid cattle ; in respect it was in bear-seed time, and some of them were plough goods ; *item*, because they had poinded more than they know would satisfy the debt ; and, therefore, protested for spulyie, and all damage and interest that might follow : upon which he took instruments in a notary's hand. Hewat makes and constitutes Alexander Abercrombie of Fetterneir his assignee to the right he had to pursue the said action of spulyie, and to call for redelivery of the said goods ; who immediately intents summons of spulyie, and violent profits against Ronald of Woodhill, Panton the officer, and others, their accomplices ; warning and charging them to compear, &c. to hear themselves decerned to have done wrong in the said wrongous, violent, and masterful spoliation of the said cattle, being 13 piece in all, pertaining to his cedent ; because in his possession, because on the ground of the lands possessed by him, because they stood and fed in his byres, laboured and tilled to his utility, at his pleasure, for certain space before the spoliation. *Item*, The beasts, their age, colour, horns, are all described ; *item*, What each of them was worth ; *item*, What profit Alexander Hewat, his cedent, might have made of the said beasts daily, if they had not been, in manner aforesaid, violently reft from him, and detained till now. And, therefore, he craves they may be decerned either to restore and re-deliver them to him in as good case as they were, the time of the spoliation ; or else to pay the prices thereof libelled, together with the said daily profits libelled, which his cedent might have had. For instructing the which libel, the pursuer produced the assignation made to him by the said Hewat, of the said kye and oxen, &c. dated 1662 ; then the assedation and tacks granted in 1657 by Ronald to Hewat ; then Ronald's discharge of 1659, and all terms preceding ; then the transumpt of the executions of the poinding, under the said Panton's subscription manual ; then his (Hewat's) instruments he took in [the] notary's hands, protesting against the illegality of their poinding.

Compear the defenders by their procurator ; and for them he produces the instrument taken upon the apprising, and the offer made of the said cattle to the said Hewat, or any in his name that would accept the same, for the prices at the which they were apprised ; *item*, A note of the executions of the poinding, bearing the persons' names (nine in number) that apprised, and their prices, &c. with letters of incident diligence against the said Panton, for making him exhibit the said principal executions. All which, the Lords having well con-

sidered, they assoilyie the defenders from spulyie as to the four kye and the quoyack, because they find them to have been orderly poided: *item*, Decern them to have done wrong,—yea, to have committed spulyie in their pretended poiding of the four oxen, the three followers, and the steir; and, therefore, ordain them to re-deliver the same to this pursuer as assignee, or else to content and pay to him L.18, as the price of each of the said oxen and steir, modified by the Lords; *item*, L.40 for violent or excrescent profits of the same: yet assoilyie from any violent profits of the three followers or steir, because they have none, &c.; and ordain letters of horning to pass upon the premises on fifteen days; because they found the alleged poiding thereof to be a direct spulyie. And this, notwithstanding, that, the time of litiscontestation, it was alleged by the defenders that they ought to be assoilyied from the said spulyie, because they poided the foresaid goods alleged spulyied, by virtue of a lawful sentence for a debt truly resting: for this having been found relevant, and so admitted to their probation, and a day assigned to that effect; whereon their procurator protested for an incident, and the pursuer's procurators in the contrary; the day being come, he succumbed in his probation for them, and the Lords found the exception of lawful poiding proponed by the defenders, proven allenary as to the five kye; and, therefore, as to the oxen, &c. gave furth their decreet, *ut supra*.

*Act.* Mr. George Nicolson, Mr. Alexander Seaton. *Alt.* Mr. David Thoirs.

*Signet MS. No. 6, folio 2.*

1663. *November 21.* THOMAS HEPBURNE *against* JO. KER, MATTHEW ROWAN, and OTHERS.

ROBERT HEPBURNE, merchant-burgess in Glasgow, had, the time of his de-  
 cease, sundry tenements of lands lying within the said burgh pertaining to him.  
 He dies. Thomas Hepburne, in Craigmuire, his brother's son, as apparent heir,  
 intents a summons of exhibition of whatsoever writs, rights, evidents, contracts,  
 dispositions, charters, infestments, precepts of seasine, heritable bonds, and other  
 securities, granted to his said uncle or his authors, of the said lands and tenements,  
 or his other rights whatsoever, that he may have inspection thereof, *ad deliberan-*  
*dum* whether he should enter heir or not to his said uncle; *item*, for delivery of  
 the same to him as his own proper writs and evidents, to be used by him at his  
 pleasure, if he find upon inspection thereof that it will be profitable to him to serve  
 and retour himself heir to his uncle; and these unrased, uncanceled, &c. against  
 Jo. Ker, Matthew Rowan, writer in Glasgow, and others, as havers, one or other  
 of them in their hands, keeping, and custody, the said writs and evidents after  
 called for, (which must be specially designed,) or, at the least, had them, and have  
 now fraudfully put the same away. Their having thereof, he refers to their oath  
 of verity; whereupon their procurator takes a day to produce them to give their  
 oaths; which, the day being come, he accordingly did. And they upon their oath  
 being examined anent the points of the summons, the Lords found their deposi-  
 tions not to prove the said summons libelled against them. Whereupon by decreet  
 absolvitor, the Lords assoilyie them *simpliciter* from the articles of the summons,