

123-16



REGULATIONS  
FOR THE  
BARON-COURTS  
OF THE  
ANNEXED ESTATES.

I. THE Bailie has both a criminal and a civil Jurisdiction; but he is not to judge in any criminal Cause, other than Assaults, Batteries, or smaller Crimes, for which the Punishment shall not exceed Twenty Shillings *Sterling*, or setting in the Stocks for three Hours in the Day-time; which Fine shall be recovered by pointing, or by Imprisonment, not exceeding one Month: And as to civil Causes, he is not to judge in any Cause where the Debt or Damage shall exceed Forty Shillings *Sterling*, other than for recovering and uplifting from the Vassals, Tenants, or Possessors of the Lands within the Barony, the Mails and Duties, Rents and Profits thereof, or for recovering Multures or Mill-services.

II. THERE shall be in each Estate a certain Number of Head-courts held yearly at a certain Place, and during a certain fixed Time, to be appointed by the Commissioners: And Courts shall be held at other Times as Occasion shall require; and, if there is Time, the same may be advertised from the Church-door on the *Sunday* preceding.

III. IN all Cases where a liquid Sum is claimed, extending to more than Twenty Shillings *Sterling*, the Officer is to leave  
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with the Defender, when he summons him, a signed Copy of the Claim, mentioning the Day on which he is to appear.

IV. THE Citation may be given to the Defender either personally, or may be left at his Dwelling-house. Personal Citation is given by verbally summoning and warning the Defender to a Day, upon which he is to appear, or by delivering the said Copy to him. Citation at the Dwelling-house is given by leaving the Copy of the Claim, and a Citation subjoined, with some of the Defender's Family at his Dwelling-house. But if possible all Citations should be personal. In both Cases the Citation must be given in Presence of two Witnesses.

FORM of a CLAIM, and CITATION subjoined.

COMPLAINS *AB* against *CD*, that the Defender is owing to the Pursuer the Sum of \_\_\_\_\_ (here mention the Ground of Debt) which he refuses to pay, unless compelled; and therefore he ought and should be decerned in Payment of the same, with a fifth Part more (or the Penalty in the Tack) as the Expences of Plea: According to Justice. And *I, EF*, Officer, hereby summon, warn, and charge you, the said *CD* Defender, to appear and answer to the above Complaint in a Baron-court to be held at \_\_\_\_\_ the \_\_\_\_\_ Day of \_\_\_\_\_ This I do, before these Witnesses *GH*, and *IK*, upon this \_\_\_\_\_ Day of \_\_\_\_\_ with Certification as effects. Signed *EF* Officer.

FORM of an EXECUTION, which the Officer must return.

UPON the \_\_\_\_\_ Day of \_\_\_\_\_ *I, EF*, Baron-officer of the Barony of \_\_\_\_\_ lawfully summoned, warned, and charged *CD* to appear at the Instance of *AB*, in a Baron-court to \_\_\_\_\_

to be held at \_\_\_\_\_ the \_\_\_\_\_ Day of \_\_\_\_\_ in the Hour of Cause, with Certification to him as effects. This I did, by delivering to the said *CD*, personally apprehended within the Lands of the said Barony, a Copy of the said Pursuer's Claim against him, in Presence of *GH*, and *IK*, Witnesses hereto. Signed *EF*.

V. IN Case the Citation was only verbal, and no Copy of the Claim left with the Defender, the Execution must conclude as follows: "This I did, by summoning the said *CD*, personally apprehended within the Lands of the said Barony, in Presence of, &c." as above. And in Case the Citation was left at the Defender's Dwelling-house, then the Execution must conclude as follows: "This I did, by leaving a Copy of the said Claim at the Dwelling of the Defender, with his Wife, (or her Husband) or Servant, because I could not apprehend him personally, in Presence of, &c." as above.

IN Case the Defender does not appear, the Officer must verify the Truth of his Execution on Oath, to be marked thereon, and signed by the Bailie.

VI. WHEN the Court is met, first of all it is to be fenced in the following Manner by the Serjeant or Baron-officer, viz. "I defend and forbid, in His Majesty's Name and Authority, and in Name and Authority of the Commissioners and Trustees, &c. and of \_\_\_\_\_ their Bailie, that no Persons take Speech upon them, without Leave asked and given, or otherwise trouble or molest this Court, under the Pains of Law. GOD save the King."

VII. THEN the Procceses are called in the following Manner, viz.

THE Officer calls the Parties; and the Pursuer, or a Procurator for him, gives in his Claim in Writing, together with the Execution against the Defender, and Writings founded upon, if \_\_\_\_\_ any

[ 4 ]

any there be. And if the Pursuer do not appear, the Defender may produce the Copy of the Claim left with him; and thereupon the Bailie will grant Protestation against the Pursuer for not insisting, and allow the Defender his Expences.

VIII. UPON the Claim or Copy being produced as aforesaid, the Clerk is to title the Court, that is to say, write the Place, Date, and Name of the Judge, thus:

AT the Day of in presence of  
Baron-bailie, "Compeared *AB*, Pursuer or Defender, or Procurator, and produced, &c. (here mention the whole Production,) and craved Decreet or Protestation," as the Case shall be.

IX. IF the Pursuer is absent, and none appear for him, the Stile of the Interlocutor will be, "Grants Protestation for not insisting, and the Sum of for Expences of Plea."

IF the Defender is absent, the Stile of the Interlocutor will be, "The Bailie having considered the Pursuer's Claim, and Execution thereof, together with the (here mention any Papers produced, or Proof, in Case there has been one,) and the Defender not compearing, hold him as confessed, and decerns for the Sum of libelled, and the Sum of for Expences of Plea." Signed *IN* Bailie.

IN Case the Defender appear, and confess the Debt, he should be made to sign his Confession, if he can write; and then the Stile of the Interlocutor will be, after the Word *Defender*, "appearing and confessing the Debt, decerns, &c." as above.

IF the Defender compear and defend, then his Compearance and Defence must be shortly minuted thus: "The Defender compearing denied the Libel, or alledged, &c." (as the Case shall be.)

IF the Party's Oath is taken, the same must be set down in the Minute, and signed by him, (if he can write,) and by the Bailie.

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X. IF a Proof is necessary, the Bailie is to sign an Interlocutor, allowing the same to both Parties, (if desired,) and fixing a Time for taking the same, and a Court-day for reporting the same.

XI. IN taking the Proof, after the Witness is sworn, he must be purged, that is, must be asked upon Oath, If he has any Malice at either of the Parties; if any Person has counselled him what to say; if he has got any good Deed, or Promise of good Deed, for what he shall say. And he must be asked how old he is, and whether married.

THEN the Facts to be proved are to be asked him by the Bailie, as he shall judge fit or necessary to be asked: And his Oath must be taken down by the Clerk thus, *viz.* *AB* Witness, aged married, or unmarried, solemnly sworn, purged, and interrogated for the Pursuer, (or Defender,) as the Case shall be, depones, &c. And his Oath must be signed by him, (if he can write,) and by the Bailie.

XII. IF a Case or Proof is not concluded, the Interlocutor must always adjourn and continue it to a Court day certain, otherways a new Citation may be necessary.

XIII. IN Case there be Danger of the Tenants abstracting the Subjects, over which the Hypothec extends, which are the Fund of Payment, the Bailie, upon a Petition for sequestrating and rousing, may order the Defender to be served with a Copy of the same, and to answer betwixt and a short Day; and, in the mean Time, grant Warrant for Sequestration of the Goods, "ay and while the same be taken off;" with Certification as effeirs.

A COPY of the Warrant, and List of the Goods, must be left at the Defender's House, and may be also affixed at the Market Cross, or Heretor's Gate; and the Officer should return an Execution, signed by him, bearing he has so done in Pre-

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fence of two Witnesses. And it may be also proper sometimes to appoint Persons to attend and watch the Goods sequestrated.

XIV. AFTER Decree the Bailie may grant the Precept for Arrestment or poinding, or may subjoin a Warrant for that Effect to his Interlocutor, as thus: "And for Payment of the Sum of                    hereby grants Warrant for arresting and for poinding the Defender's Goods and Effects."

FOR the Purpose of poinding, the Bailie may appoint certain proper Persons to be ordinary Comprisers, or Birly-men, in the Barony, to put a Value on Goods poinded; and take their Oaths for their faithful Administration of their Office.

XV. UPON a Warrant for poinding, the same may be instantly executed in the following Manner, *viz.* The Officer, within the Bounds of his Jurisdiction, goes, with such Assistants as are sufficient to the Place where the Goods of the Debtor lie; and he may either proceed to the poinding there, or may carry the Goods, or Samples, to the Place appointed for poinding in the Barony; then having gathered the Goods together, and exposed them to publick View, he must read the Precept of Poinding: Thereafter the Officer must appoint two impartial and unsuspected Persons, against whom the Debtor can instruct no just Exception, to comprise the Goods; and to these the Officer must administrate the Oath for faithful Administration of their Office. Then the Officer having made Choice of the Goods to be appraised, to the Extent of the Debt and Sheriff-fee, (that is  $\frac{1}{20}$  more,) the Comprisers put a Value thereupon, to the best of their Skill; then the Officer makes Intimation by three publick Oyesses, and declares the Price of the Goods; and thereafter he makes Offer back of the Goods, three several Times, to the Debtor, or to any Person in his Name, who will pay the Price to which the Goods are appraised; with Certification, that if such Prices are not paid, he will deliver the Goods appraised to the Creditor in Satisf-

[ 7 ]

Satisfaction of the Debt. And accordingly, if the Price of the Goods is not paid as aforesaid, and if no third Party appear to claim the Goods as his Property, the Officer may deliver them over to the Creditor, or any having his Warrant, (which is sufficiently instructed by having the Precept of Poinding,) for Payment of the Debt in whole or in Part, to be disposed of as his own Goods at Pleasure. If the Debtor offer Payment before the Poinding be completed, Time must be given for counting over the Money and writing the Discharge. If any third Party shall appear during the Poinding, and make Oath, (which Oath the Officer may administrate,) that the Goods are his Property, they are not to be poinded.

XVI. IN some Baronies it is the Custom instead of poinding the Goods in the Place where they are found, to carry them, or Samples of them, to the Market Cross of the Barony, or to the Master's Gate, or to some other Place appointed for poinding, and to poind them there: If there is Time, this is more eligible, because it is more publick; and a Note of the Goods carried away should be left on the Ground subscribed by the Officer.

XVII. IF the Goods poinded be redeemed by Payment of Part of the Debt, they may just be poinded over again for the Remainder.

XVIII. IF a Notary be present at the Poinding, (which is generally the Case,) Instruments ought to be taken in his Hands that the Goods are lawfully poinded.

XIX. IF the Goods poinded be Corns in the Straw, they are poinded by Rips; and sworn Corn-casters should be employed to cast and thresh them out to the Proof: And either Party ought to be allowed to see them cast, threshed, and measured.

AFTER

AFTER the Poinding is complete, the Officer ought to give the Debtor a Copy of the Warrant of Poinding, and Execution thereof, signed by him, in Order to be an Instruction of the Payment of the Debt.

XX. NEITHER Oxen, Horses, or other Goods pertaining to the Plough, and that labour the Ground, during the Time of labouring the same, are to be appraised or poinded, in Case any other Goods upon the Ground are to be found.

XXI. ALL Proceedings ought to be completed with up Sun.

FORM of an EXECUTION of POINDING.

UPON the Day of I Baron officer of the Barony of by Virtue of a Precept of Poinding, dated the raised at the Instance of C D against A B, Past to and from, (if that is the Case,) I carried the Goods after mentioned to the ordinary Place of poinding in the Barony; where, after crying of three several Oyeses, open Proclamation, and publick Reading of the said Precept, I apprehended and carried the Goods and Gear after mentioned, pertaining and belonging to the said Imprimis, Two Stacks Oats, two Stacks Hay, two Horses, four Pewter plates, (as the Case may be;) and then and there, after exposing of the Bestial, and Samples of the Corn and Hay, I adduced and designed G H and I K to be Appraisers, to whom I administrate the Oath for faithful Administration; and they having sworn the said Oath, and taken Inspection of the Goods and Samples, valued the same at the Prices after mentioned, to wit, each Boll of the said Oats, with the Fodder, to and each Stone of the said Hay to and each Pound Weight of the said Pewter to and the said two Horses to And I made, three several Times, Offer back again of

of the said Goods to the said or any Person in his Name, who would compear and make Payment to the said C D of the particular Sums to which the same were comprised; and in Regard none compeared for that Effect, or to pretend Right to the said Goods, I, by Virtue of the said Warrant of Poinding, adjudged, decerned, and declared the same to pertain and belong to the said C D, and delivered the same to him, or to A S Procurator for the said C D, in Manner following, to wit, the said Horse by the Ear, and the said Corn by Rips, and Pieces of each Kind as Symbols for the whole, as Use is, and in Payment and Satisfaction (or in Part Payment) of the Debt contained in the Warrant of Poinding, with my Sheriff-fee corresponding thereto; which Sheriff-fee, in Respect the said C D has made Satisfaction to me for the same, I hereby assign and dispone to him for ever: Whereupon the said C D (or A S Procurator for the said C D) asked and took Instruments in the Hands of A F Notary-publick. This I did, conform to the said Warrant of Poinding in all Points, before these Witnesses and And thereafter, upon the Day of and Year foresaid, I, the said Officer, went back to the said Corn-yard, or House, in Order to cast the said Stack of Oats, and weigh the said Hay or Pewter; and there I adduced and designed to be Caster, Thresher, Dighter, and Measurer of the said Corns, or Weigher of the said Hay, to whom I administrate the Oath of faithful Administration; and who having accordingly taken the said Oath, and the said Corns being cast to the Proof, threshed, dighted, and measured, and the said Hay and other Goods being weighed, the same did extend and amount to the particular Quantities after mentioned, to wit, &c. All which Goods above written amount in Money, at the particular Prices and Avails above mentioned, to the Sum of And I left upon the Ground, where the said Goods were poinded, an exact Note and List of the same, and Prices thereof. And for the more Verification of this my Execution, I, and the Notary-

tary-publick, and the foresaid Witnesfes, have subscribed the fame.

G H Witnesf.

Signed L M Officer.

E F N. P.

I K Witnesf.

THE Prefence of a Notary-publick is not absolutely necessary at pointing, but it is safest, and it is almost always the Case, on Account of the Ignorance and Want of Skill in the Officer who executes the Pointing. And from the Notary's Instrument the Execution of Pointing is easiest made up.

XXII. IN Case the Officer cannot get Access to the House of the Debtor, he returns an Execution in the following Manner.

UPON the Day of I Officer, by Virtue of a Command of a Precept of Pointing, dated raised at the Instance of against past with a Notary, Appraisers, and Witnesfes, and a Procurator for to the Dwelling-house, or Cellar, possessed by the said to have pointed the Effects therein belonging to the said for Payment to the said (here narrate the Grounds of Debt;) but could not proceed in the Pointing by Reason of steecked and Lock-fast Doors. This I did, after the Form and Tenor of the foresaid Precept, in all Points, before these Witnesfes and

THE Bailie may, upon Application, grant Warrant for breaking open Lock-fast Doors.

XXIII. IN Case of the Officer's being deforced, he is to return an Execution in the following Form.

**-EXECUTION upon being DEFORCED.**

UPON the Day of Years, by Virtue of a Precept of Pointing, dated the Day of Years, at the Instance of A B against C D, for Payment to the said A B of

of the Sums, (here narrate the Sums and Grounds of Debt,) I Baron-officer, past with the Notary-publick, and Witnesfes subscribing, together with the said A B, (or E F as Procurator for the said A B,) and with the Appraisers after named, to an House in and having the said Precept or Warrant in my Hand, and after my crying of three several Oyesses, making open Proclamation and publick Reading of the said Warrant, in His Majesty's Name and Authority, I apprehended and pointed a Parcel of belonging to the said C D; and I made Choice of and to be Appraisers, to whom I did administrate the Oath for faithful Administration, who having sworn the said Oath, took upon them the said Office; and having inspected the said and considered the Value thereof, did both agree in valuing and appraising the same as follows, viz. the said at the Sum of Sterling, &c. when compeared G H, and with Violence pulled out of my Hands one of the said (here narrate the particular Acts and the Expressions used by the Deforcer, and the Answer given by the Pointer, &c.) and therefore the said A B protested, that the said G H was guilty of a Deforcement, and should be liable to him not only in the Pains of Law, but for the Value of the said and for Payment of the Sums of Money afore said, and for all Damages and Expences: And thereupon the said A B, and I the said Officer, asked and took Instruments in the Hands of I K Notary-publick. Those Things were done betwixt the Hours of Three and Five in the Afternoon of the Day, Month, and Year of GOD afore said, in Prefence of and Witnesfes, on this and the preceding Pages, specially called and required.

N O Witnesf.

L M Officer.

P Q Witnesf.

I K N. P.

F E E S

## F E E S of C O U R T.

## XXIV. TO the C L E R K.

			<i>Sterling.</i>
For every Claim or Petition	-	L.	o o 4
For every Deposition of a Party	-	-	o o 4
For every Deposition of a Witness	-	-	o o 4

## TO the OFFICER himself, and Witnesses.

For summoning a Party or Witness	-	-	o o 6
But if the Parties or Witnesses exceed three in Number, for each only	-	-	o o 3

XXV. EACH Baron-bailie shall keep three Books of Record. In the first shall be entered all Regulations and Acts of Court, and all general Orders from the Commissioners; in the second, all Proceedings of the Court; and in the third, all Fines set, imposed, and levied: For which Books the Bailie shall be answerable.

XXVI. THE Fines shall be paid over to the Factor, and a distinct Note of them shall be annually laid before the Commissioners for their Directions.