

ad 98 Par. 6 J. 4. Labouring beasts are Beasts belonging to the Plough, or beasts of husbandry, in latine averia facticia. Which were averia domi (as Spelman) Deduce from the french cuvre, as if chiefly working cattle were thereby Denoted; others bring it from avoir to have or possess, whence we say a half aver, for a sluggish horse or lazy beast. Doct. Couel (Caus. Dict. verb. averia) thinks the word liger to have been only a corruption of aver and to have signified at first any beast, tho now restrained to the younger kind. Under the Denomination of Labouring beasts I take in those that labour forage. M. Denzie Crime. Part 1 fol. 31 § 4 without which they cannot be laboured. Such labouring beasts cannot be taken pined tho not actually at work at the time. Decemb. 1630 Giffon contra Forster, or that they had not plowed that season. June 1678 Wood contra Stuart. Nor is it considered what beasts are taken to plow such ground, but only what are commonly used for that end. 7 June 1678 Wood contra Stuart. And it is all a matter whether those other goods on the ground be the debtors or not. Stair lib. 1 fol. 9 § 2. But under the Denomination of other goods, house hold Furniture is not comprehended, because they goe not by the name of goods on the ground. Stair lib. 4 fol. 34. By Labouring time, is understood the ordinary season of Cultivating and sowing the ground, in such a place of the countrey. viz. from the time of striking plough to up seed time; or tho one is actually labouring his ground, tho tho labouring, or then over in the rest of the neighbour hood. 20 June 1712 Arnold contra Greig. The Reason why such labouring beasts cannot in time of labouring be pined, is not only because of the presumption, that it was not the Inten tion of parties to strip the Debtor of things Destined to so necessary an use; But like wise because of the prejudice the publick might suffer from such Interruption of Agriculture. And the former reasons are liable in a Spuilzie: Yea were found by the Court of Justiciary guilty of a Crime punishable by a fine, to be applied to the pike. 23 January 1666 Lord Rentoun contra Godrick M. Kane & Alison. But such beasts belonging to a Debtor, may be pined after his labouring is over. Tho most of the labouring in that place be not ended. 22 Novemb. 1628 Walson contra Reid, M. Henrys observ. ad 98 Par. 6 J. 4. Nor doth the law Indulge this privilege

of Exemption from pinding to beasts of the plough, when ploughing after up seed time or sowing in fallowings of ground, or the like. Labouring beasts may be pined even in labouring time, if the Debtor have not other pindable goods on the ground sufficient to satisfy the Debt. ad 98 Par. 6 J. 4. For our Legislators thought it not just, that the Creditor should be quite disappointed of his Debt, which he might possibly be if his pinding of Beasts of the plough were in such a case suspended and kept back for a time by the Debtors abstracting and keeping them out of the way. It was once found Unwarrantable to pind such labouring beasts when there are other goods upon the ground sufficient to pay the Debt, Altho the Debtor had not showed his other goods to the person that came to pind. Decemb. 1630 Giffon contra Forster. But the Lord Stair lib. 4 fol. 302 § 2 Indimates, that plough goods are only exempted from pinding, where there is abundance of ground, which exceeds what is offered to him. For the first law, tho only beasts belonging to the plough, ploughs, and other things necessary for tilling and cultivating the ground, but even plough men were not to be attached by creditors. C. & G. que respicit. capit. 10. fol. 2. lib. 1. capit. 10. fol. 2. lib. 1. Nor doth the law make any Distinction whether there were other pindable goods or not. The Ancient common law of England, does neither allow Accents belonging to the plough to be Distrained, nor the Utensils or Instruments of any merrit trade or profession, as the Axe of a Carpenter, or the Books of a Scholar to be Distrained: because of the Damage which may accrue to the Common wealth by the Interruption of trade and Commerce. Tho first goods arrested by one Creditor may thereafter be pinded by another. 29 July 1634 Hunter contra Dick 11 March 1635 Dick contra Spence and Thomson 12 Feb. 1636 Leslie contra Vane 4 Decemb. 1679 Gorrestor contra Jackmen of the excise of Edinburgh. Because an arrestment of goods being only an Judicial Dilectio geneat doth not divest the owner of the property. Nor was it found to be Unwarrantable or Unlawfull for the person in whose hands the arrestment was used, Voluntarily to give way to the pinder to enter his house where the arrested goods were in order to execute his Diligence, and to take him expressly bound to warrant him against the