

1629. *March 21.* JAMES WEMYS *against* L. KINCRAIGIE.

One being infeft in an annual-rent out of the lands holden of the granter, and, after the granter's decease, the annual-renter pursuing the ground to be poinded, the donatar to the ward, which fell by the decease of the granter, compearing, to stay the same; and the annual-renter replying, that the ward was taken to the behoof of the apparent heir of the granter of the infeftment; which being confessed by the donatar, it was found nevertheless, That the annual-renter could not poind during the time of the ward, because, albeit the ward was taken to the use of the apparent heir, yet, seeing the apparent heir had renounced to be heir, being convened by other creditors of the defunct, to whom he was alleged to be apparent heir, and this annual-renter could not qualify nor allege that he was heir to him, that renunciation standing, the ground could not be poinded during the time of the ward, albeit the ward was taken to the use of the apparent heir, no more than it had been to the use of a stranger.

Act. *Aiton.*

Alt. *M<sup>c</sup>Gill.*

Clerk, *Gibson.*

*Durie, p. 440.*

\* \* Auchinleck reports this case:

James Wemys, being infeft in an annual-rent forth of the lands of Kincaigie, pursues the tenants for his annual-rent. Compears Mr. Robert M<sup>c</sup>Gill, donatar to the ward, and alleges, That the pursuer can have no right to the duties of the land, during the time of the ward, seeing his infeftment is but base confirmed by the superior. It was replied, That the gift of the ward was taken to the behoof of the apparent heir, whose goodsire was the disponder of the said annual-rent, to whom he is apparent heir, and so obliged to warrant the annual-rent. To the which it was duplied, That the reply is not relevant, except the minor were alleged to be heir; and true it is, he has renounced to be heir, and so may bruik the ward as if he were a stranger. The Lords repelled the reply, in respect of the duply.

*Auchinleck MS. p. 247.*

1629. *July 1.* LADY CATHCART *against* TENANTS.

A life-rent infeftment granted to a wife to be holden of the superior, and confirmed by him, excludes the ward, because the lands are full; which was found competent to be pleaded by the sub-vassals against the life-rentrix herself, who had a gift of the ward from the superior.

*Durie.*

\* \* This case is No. 6. p. 4176. *voce* FEU.

No. 13.  
The ground cannot be poinded by an annual-renter during the ward.

No. 14.