

1668. January 24.

SIMPSON against ADAMSON.

No 14.

UPON report, it was debated among the LORDS, whether a decret of poinding the ground should interrupt prescription of an annualrent right, being only against the tenants, the heritor not called. Some were of the opinion, that the decret being null, *nullum sortitur effectum*. Others thought, that prescriptions being odious, *talis qualis*, and any act of interruption was sufficient; and as prescription may be interrupted by any deed of molestation of tenants, being a natural interruption, so it may be interrupted civilly by a pursuit against the tenants.

THE LORDS did not decide the question, but thought fit to advise further.

Dirleton, No 146. p. 59.

1674. February 4.

LADY PITFODDELS against The LAIRD and TENANTS of PITFODDELS.

No 15.

In a process of poinding the ground, the pursuer is not bound to prove the rents. The decerniture goes in general. But, in executione, he must take care to poind for no more than bygones, and the current term.

THE Lady Pitfoddels being infeft in an annualrent in liferent by her husband, pursues poinding of the ground against this Laird of Pitfoddels and his Tenants. It was *alleged* for the Tenants, That by the act of Parliament in favours of poor tenants, poinding of the ground could not extend to their moveables, further than for their rent, which therefore ought to be liquidated and instructed. It was *answered*, That a poinding of the ground being a real action against the ground principally, whereby it may be appraised or adjudged, it was never delayed upon probation of the tenant's rents, but will proceed against the present and future tenants; and if any more be poinded from them than a term's rent, it will be a spuilzie, if in the time of the poinding they produced their tacks, or offered to make faith upon their rents.

THE LORDS would not delay the decret of poinding, or put the pursuer to instruct the rents, which hath not been accustomed in poindings of the ground; but if the advocates for the tenants deponed that they were employed for the tenants, the LORDS superseded the extract of the decret for a time, that the tenants might produce their tacks, or depone upon their rents where they wanted tacks, that the decret as to them might be restricted accordingly.

Fol. Dic. v. 2. p. 96. Stair, v. 2. p. 261.

1676. February 16. DR BORTHWICK against The EARL of CRAWFORD.

No 16.

A person deriving right from one holding *de facto* the fee of lands in his person, tho' *indebite* given, and by mistake, was found entit-

THE Earl of Crawford having borrowed 8000 merks from the mother and grandmother, and two of their children, for themselves, and in name and behalf of their said children, he is obliged by his bond to infeft the said mother and grandmother, in liferent, and the said children in fee, in an annualrent out of certain lands; but, by a mistake, the precept of sasine contained in the bond, is in favours only of the mother and grandmother, and for infefting them as fiars of the said annualrent, and accordingly they are infeft; and yet there- after the said mother and grandmother acknowledging, that the said infeft-

ment was so taken upon mistake, did by a disposition, bearing the narrative foresaid, dispone the fee in favours of the said children; and there was a pursuit intended, at their instance, against the said Earl of Crawford, for poinding of the ground, wherein it was *alleged*, That the mother and grandmother being only liferenters, could not resign the fee, which they had not; and if the pursuers made use of their right from them, the defenders ought to be assoilzied, because the mother and grandmother, by a transaction betwixt the said Earl of Crawford and them, had accepted, the time of the Englishes, a parcel of lands, in satisfaction of the said debts.

THE LORDS found, notwithstanding of the said allegeance, that the pursuers ought to have process for poinding the ground; in respect the mother and grandmother had *de facto* the fee in their person upon the said precept and sasine; and the same being given *indebite*, as said is, they might have been compelled to denude themselves thereof; and therefore might voluntarily, and accordingly did, denude themselves thereof; and the said transaction could not prejudice them, seeing they derived their right from the said persons *qualificate*, in respect of their interest and error foresaid, and they might have been compelled to give the same; and the Earl of Crawford was not *in bona fide* to contract with them, seeing by the bond granted by himself, they were only fiars, and the other but liferenters. *In presentia*.

Act. Lockhart & Beaton.

Act. Cunningham & Seyinton.

Clerk, ———.

Dirleton, No 338. p. 161.

1676. February 17.

DUNDASS *against* TURNBULL, and other Creditors to WHITEHEAD of Park.

IN a competition betwixt an infestment of annualrent, and a posterior infestment upon a comprising, the LORDS inclined to find, that the infestment of annualrent was made public by a pursuit of poinding the ground before the infestment upon the comprising; but some of the LORDS not being clear, the case was not decided.

Reporter, Gosford.

Dirleton, No 341. p. 163.

1676. July 1.

THE LAIRD OF POWRIE FOTHERINGHAM *against* LORD BALMERINOCHE.

POWRIE of Fotheringham having obtained a decret of poinding of the ground against the Lord Balmerinoch and his tenants, which he caused the tenants suspend, upon that ground, that they were only liable to be poinded for their yearly tack duty, and the yearly annualrent, conform to the infestment in the lands; it was *answered*, That they were not only liable yearly for the annualrents, but for all bygone annualrents resting unpaid by their master, for which the ground was poindable in law, being *debitum fundi*. THE LORDS did find, That tenants could only be distressed by poinding, in so

No 16.
led to the
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poinding the
ground.

No 17.

No 18.