

right, and the victual was ordained to be liquidate; but the annualrenter had obtained a decret for poinding of the ground *parte non comparante*, wherein this pursuer was called.

Clerk, *Gibson*.

Fol. Dic. v. 1. p. 45. Durie, p. 462.

No 2.
Annualrenter had obtained a poinding of the ground, and his right was prior.

1633. July 20.

E. ANNANDALE *against* E. NITHSDALE.

THE Earl of Annandale being infest by the Earl of Nithsdale in an annualrent out of the lands of Glendinning, raises, upon his safine, arrestment; and arrests in the hands of the tenants, the mails and duties addebted by them for the saids lands, and thereupon pursues the tenants to make the same forthcoming to him, for satisfiing the said annualrent. And the tenants *alleging*, That such an action is a great novelty upon a safine of an annualrent, to convene the tenants personally to pay the mails, and to arrest the same, there never being any preceding sentence, neither against the ground to poind the same, nor against the heritor, nor no other pursuit, but this upon a naked arrestment, raised upon a safine, and against a third person who cannot be so convened, but are purchased *periculo impetrantis*, no party being heard nor cited thereto: Which allegiance was repelled, and the action sustained.

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Alt. *Cunninghame*.

Clerk, *Gibson*.

Fol. Dic. v. 1. p. 45. Durie, p. 668.

No 3.
Arrestment of mails and duties came to be sustained, laid on in the tenants hands, on the foundation of the annualrent right.

1637. March 15.

GUTHRIE *against* E. GALLOWAY.

RICHARD GUTHRIE being made assignee, by Doctor Lindsay and Christian Herriot his spouse, to the bygones of an annualrent of 300 merks yearly, wherein they were infest by John Achanay of Sorbie, and for which they had obtained sentence, to poind the ground of the lands of Sorbie, which were affected with the said annualrent, pursues the Earl of Galloway and his sons, as heritors of the saids lands, and as they who uplift the mails and duties of the saids lands from the tenants, occupiers thereof, to make payment to him of the said annualrent, for certain years bygone owing to them; during the which years the saids defenders were in possession of the duties, as said is; wherein the defenders *alleging*, That this action ought not to be sustained for a personal pursuit against the defenders, who are not authors of the pursuer's right of the annualrent libelled, nor heirs, nor apparent heirs to him; but the most the pursuer can obtain by the custom and practice of the country, is only action and execution against the ground, and against the tenants possessors thereof, for poinding of the ground,

No 4.
A personal action was competent against all intromitters whatever, with the mails and duties.

No 4. and of the tenants goods being thereupon ; and it is a novelty to grant personal execution against a stranger, or any who is a singular successor :—THE LORDS repelled the allegiance, and sustained this personal pursuit, for payment personally against the defenders, the pursuer proving, that they intromitted with the duties of the lands, and that the quantity of their intromission extended to as much as should satisfy yearly the annualrent acclaimed ; for the Lords held the defenders in no better case, than if naked tenants had been personally convened to pay this annualrent, *quo casu* they would have sustained the process ; and with the like reason it was found, process ought to be sustained against the defenders : And the LORDS declared, that they would keep this decision thereafter in all the like cases, whensoever any should occur.

A.C. Heriot.

Alt. Stuart & Nicolson

Clerk, Gibson.

Fol. Dic. v. 1. p. 45. Durie, p. 836.

1670. February 1.

WILSON against RUSSELL.

No 5.
An action at the instance of an annual-renter who had a poinding of the ground, was sustained against the tenant personally, after his removal.

WILSON being infest in an annualrent in the lands of _____, and having obtained a decret of poinding the ground ; thereafter, Russell, being a creditor, did arrest the mails and duties in the tenant's hands, which were due to the master ; and pursuing to make arrested goods forthcoming, the tenant being removed off the ground with his whole goods : It was *alleged* for Wilson, That he ought to be preferred, because his decret of poinding of the ground was before the arrestment, and being a real diligence, did affect the whole duties payable to the master.—It was *answered* for Russell, That the tenant being removed with the whole goods, such decreets and letters being only to poind the ground, and the goods thereon, could not affect him nor his goods.—THE LORDS did prefer Wilson, the annualrenter, and found he having done prior diligence, whereby he might have poinded the tenant before he removed, albeit he did prejudge himself of all the execution against the tenant's goods, after they were off the ground, yet *quoad* the duties payable to the master, for which he might pursue him *personali actione*, he was not prejudged from the benefit thereof by the tenant's removal : But the decret of poinding of the ground, and letters thereof, being a real execution prior to the arrestment, made him preferable to the arrester, as to the duties for which he was liable to the common debtor.

Fol. Dic. v. 1. p. 45. Gosford, MS. No 241. p. 98.