

him out charter and precept of poinding of the said lands.—THE LORDS sustained the action.

No 21.

Auchinleck, MS. p. 107.

1668. June 25. GEORGE HERIOT *against* TOWN of EDINBURGH.

No 22.

GEORGE HERIOT's father being infest in an annualrent out of certain tenements in the Canongate, obtained himself to be served heir in special therein, before the Bailies of the Canongate; and because the same is within a regality, having a proper chapel, and was not to be retoured to the King's Chancery, so that precepts were not to be had out of the Chancery against the Town of Edinburgh, superiors, to charge them to infest him; therefore George, upon supplication, obtained letters from the Lords to charge them, and they being now charged, he pursues a poinding of the ground.—It was *alleged* for the Town, no process for poinding of the ground, till the pursuer was infest in the annualrent.—It was *answered*, That he having done diligence against the Town, it was equivalent, and did exclude them from proponing that allegiance.—It was *answered*, That no personal objection against the Town could be a sufficient title against this action without a real right.

A party was served heir in special before the Bailies of Canongate, which being a regality, there was no retour to the Chancery, so as to obtain precept to charge the superior to infest. The Court declared, that after the superior had been denounced, they would grant warrant to the Director of Chancery to issue a precept.

THE LORDS found no process till infestment; but declared, that so soon as the Magistrates should be denounced, they would grant warrant to the Director of the Chancery to issue a precept for infesting the pursuer, for supplying the place of the Magistrates and their contumacy. See PERSONAL OBJECTION.

Fel. Dic. v. 1. p. 470. Stair, v. 1. p. 543.

. This case is reported by Gosford:

GEORGE HERIOT being served heir to his father, to an annualrent out of a tenement of land in the Canongate, whereof the Town of Edinburgh were both superiors, and had acquired the right of property, and having required the Magistrates to infest him, did thereupon pursue a poinding of the ground.—It being *alleged*, That he could not pursue unless he were infest; this allegiance was found relevant, notwithstanding that it was *replied*, That the defenders were superiors themselves, and being required, were *in mora*; because the LORDS found, That albeit a retour and a charge against the superior were sufficient to pursue an action for mails and duties, yet it was not a good title to poinding of the ground without an infestment; and the said tenement lying within the regality, they would not ordain a precept to be direct out of the Chancery, for infesting the pursuer to be holden of the King upon a simple resignation; but ordained first that letters should be raised to charge the superiors, and they denounced, before that they should ordain precepts to be direct out of the Chancery.

Gosford, MS. No 8. p. 4.