

having each of them an infeftment of annualrent, for security of some money, due furth of Stewart of Kettleston's lands; Mr Thomas was infeft in several lands lying in Linlithgowshire, and in others lying in East Lothian. Alexander Miln was only infeft in the lands in Linlithgowshire. A competition arising betwixt them, in a poinding of the ground, which of the two infeftments should be preferred; Mr Thomas produced a discharge, granted by him to the tenants of the lands in East Lothian, of their farms, which proved his right and infeftment was clad with possession. Alexander craved to be preferred *quoad* the lands in Linlithgowshire, because he produced a decret of poinding the ground against these tenants; and contended, that Mr Thomas producing nothing to instruct his infeftment to be in the least clad with possession *quoad* these lands, which were a different subject from the other, he ought to be preferred *quoad* them. Notwithstanding whereof, the Lords, this day, found Mr Thomas his infeftment preferable; and that his possession he had attained of the East Lothian lands, being prior to Alexander's decret of poinding of the ground against the other, the *jus annui redditus*, being indivisible, was sufficient to clothe his right with possession *quoad* both, though they were upliftable out of different subject-matters, and lands lying in divers shires: and inclined to find that it was in a party's option, who had infeftment out of sundry lands, to take him to any of them for his annualrent. Yet Sir George Lockhart was of opinion, that, in such a case, law obliged him *cedere actionem* to others who had real rights on the other affected lands and tenements, unless he could condescend upon a prejudice he had thereby. See 21st February 1671 and 22d June 1671. Possession of a part was found sufficient for the whole, Durie, 17th December 1628, Chalmers.

Yea the Lords found, in a case less favourable, where one had got an infeftment of annualrent furth of some lands, and thereafter an infeftment in other lands, in corroboration of the first, and was in possession of the lands contained in the corroboration; but thereafter finding them encumbered, and being willing to recur to the first lands; the Lords sustained his possession, as if it had been in the whole, against another infeftment that competed with them.

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1678. November 13. SIR R. HEPBURN of KEITH *against* DAVID BORTHWICK.

In a cause, pursued by Sir R. Hepburn of Keith against David Borthwick his tenant, for removing; as also for leaving so much fulyie on the ground, at his departure, as was contained in his tack: it came here to be questioned, if he was obliged to leave lime, since that was the usual way of improving and gooding land in East Lothian, at least in that corner of it. It was thought lime would not come under the general name of muck, because it has other more principal ends and designs, besides the bringing in of barren lands, *viz.* in building, &c.

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