

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 præsentia*.

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 process of poinding the ground.

No 17.

No 18.