

1684. *March.*PITLIVER *against* PROVOST MILN.

BROOMHALL having disposed to Pitliver an infeftment of annual-rent, out of the lands of Darsie, and an infeftment of property out of Broomhall; and having likewise disposed to Robert Miln the said right of annual-rent out of the lands of Darsie, and, *in eodem corpore juris*, a right of annual-rent out of the lands of Broomhall; there arose a competition betwixt Pitliver and Robert Miln. Alleged for Robert Miln, That he having recovered a decret of poinding of the grounds of the lands of Darsie, before Pitliver's confirmation of the property of Broomhall, his decret must likewise clothe the right of annual-rent, *quoad* Broomhall, which was *in eodem corpore*; and, since the registration of rights, infeftments cannot be said to be latent, so as any kind of diligence ought to clothe them with possession. Nor has the diligence any respect to the publication of the same to the lieges: for certainly a creditor's granting a discharge of money, paid to him by the debtor, relative to different rights of lands, would clothe all these with possession, whether they be *in eodem corpore* or not; of which the lieges would know little, whether the same remained private or public: and a process of poinding is a better notification to them. Answered for Pitliver, Private rights are made public, and clothed with possession the same way, since the Act for registration, as before; and though, in the case of the Lord Cardross against Van Sommerdyke, &c. March 1682, the decret of poinding the ground was sustained to clothe the infeftment with possession as to other lands, *in eodem corpore juris*, lying in another jurisdiction; yet the payment or actual poinding followed before the competing right was clothed with possession, as in Mr Thomas Hay's case against Kettlestone's Creditors—or the lands without were contiguous with those within the regality, which is a natural, though not a formal union; nor can the process of poinding, founded on the sasine of Darsie, be considered a publication *quoad* the lands of Broomhall, which are not comprehended therein. The Lords delayed to pronounce interlocutor till the practiques were considered.

It was pleaded in this process, That Broomhall [could not] give an annual-rent out of his annual-rent out of Darsie, because that were *servitus servitutis*. But he having likewise an apprising of the property, this point was not insisted upon; nor is it solid.—*Castlehill's Pratt. tit. Infeftment, No. 67.*

*Page 165, No. 596.*

1684, *March*; & 1685, *January*. The LAIRD of HORSBURGH *against* JOHN ADAM.

IN a reduction, *ex capite lecti*, of a disposition made by a bastard, at the instance of a donator of the bastardy, upon this ground, That the disposition contained a clause dispensing with delivery, which makes it presumed to have been done *in lecto*, especially at the donator's instance, who is materially in the right of *ultimus hæres*; and bastards have not *testamenti factionem*;—the Lords found that the pursuer must prove that the defunct was *in lecto* the time of subscribing.—*March 1684.*

The debate being afterwards resumed, the Lords adhered to their former