

No 13.

against Oliphant, No 24. p. 1294. does not meet the case, because in that case the first base infestment had not obtained possession by payment of a term's annual-rent subsequent to the sasine; but only had received payment of a term's annual-rent, due by the bond preceding the base infestment; and the party was that publicly infest had attained to the possession, and gotten payment of the rents for the next term subsequent to the infestment, and several years right thereafter. —THE LORDS preferred the base infestment, the defender proving, that he got payment of the next term's rent, subsequent to the infestment at that term, or shortly thereafter.

Sir P. Home, MS. No 805.

S E C T. III.

Publication by Process of Mails and Duties, and Poinding of the Ground.

1605. June 19.

DOUGLAS against DOUGLAS.

No 13.

A man gave infestment of annual-rent to a conjunct person, to be holden of himself. The receiver raised letters for poinding the ground; yet as no possession followed, and the party was *in mora*, a stranger buying the land excluded him.

DOUGLAS, brother to Kilspurdie, perfewed Alex. Douglas Maiffer, to heir and sie the ground of his lands of Crawford poynded for ane annuel-rent analied furth thair of, be the Laird of Kilspurdie, to this perfewar, his brother, be the space of 26 yeirs fyne or thairby. It was *alleged*, That this perfewar could have na process for poynding of this ground, becaus his titill wes ane privat sasine, never authorised be possession, and thairfore could not give action agains this defendar, having conqueised the propertie of thir lands from Kilspurdie *titulo oneroso*, and had obtained publick heritabill infestment thair of, holden of the superioure, and possession be virtue thair of. It was *ansred*, That the perfewar had raised letters to search, seik, poynd, and appryse, the readiest gudds, being upon the saids lands lang befor the said Alexander's infestment, and sua his infestment could not be reput privat; notwithstanding whair of the LORDS fand the allegiance relevant, and wald not grant letters to poynd the ground. At this tyme wes remembred the lyk practik betwix auld William Crichton, servitour to my Lord Chancelaer, and the Laird of Drylaw, and betwix Sir Robert Stewart and Hali-burton and Logane*.

Haddington, MS. No 825.

* Examine General List of Names.