

1624. June 30.

KEIR *against* HEPBURN.

No 5.
A decree of
poinding the
ground is
real, and
serves as long
as the obtain-
er lives, tho'
the heritor
should die,
or the prop-
erty be
transferred.

IN an action pursued for spuizied goods by John Keir against Hepburn, the defender *alleged*, That the goods libelled to be spuizied were lawfully poinded, by virtue of a sentence of poinding of the ground, for an annualrent addebted out of the ground. The pursuer quarrelled the decret, as no warrant to poind, seeing the same was given against the L. of Sydserff, first heritor of the ground, who was only party called therein, and who being dead before the poinding, the sentence could not be a warrant to use any execution thereupon, after the decease of him against whom only the same was given. The allegiance upon the poinding was by the Lords found relevant, and the decret sustained as a sufficient warrant thereto, albeit the heritor, who was called only, was dead; for the LORDS found, that the decret to poind the ground was real, and served against the ground, to poind the same, by virtue thereof, so long as that person lived, at whose instance the sentence was obtained, albeit the heritor should die, or change from one person to another; which alteration ought not to impede the said real execution, the obtainer thereof living, as said is.

Clerk, *Gibson*.*Fol. Dic. v. 2. p. 96. Durie, p. 132.*

*** Kerse reports this case:

1624. July 30.—FOUND by the LORDS, that a decret of poinding of the ground for annualrent may be put to execution, albeit the heritor against whom it was obtained be dead without transferring *idque quoad singularem successorem*.

*Kerse, MS. folio 201.*1628. February 28. PHILIP *against* L. ROSSYTH.

No 6.

IN an action of poinding of the ground, Philip *contra* L. Rosyth, for an annualrent, wherein Philip was infest, as heir to his father, and for all the years which were owing intervening, after his father's decease, and before the pursuer's service and retour, as heir to him; for the which years, he *alleged*, That his retour behoved to be effectual to him, and was to be drawn back to the time of his decease; and the defender *alleging*, That, for the intervening years, the annualrent was in non-entry in the heritors hands, and so could not pertain to the heir before he was retoured and seised:—THE LORDS found, that, by this action of poinding of the ground, the pursuer could not seek the ground to be poinded for these years, and assoilzied from this pursuit, without prejudice to him to seek the same otherwise, by any other lawful pursuit; and without prejudice of the defender's exceptions against the same, when it shall be intended, as accords of the law.

Act. ———.

Alt. *Nairn*.Clerk, *Hay*.*Durie, p. 352.*