

S E C T. XXIV.

Citation in Poinding of the Ground.

1609. *December 9.*SPOTTISWOOD *against* The LAIRDS of WESTFORTUNE and WAUCHTOUN.

No 114.
A compriser
not infest
need not be
called.

THOMAS SPOTTISWOOD in Haddington pursued the Laird of West Fortoun to hear and see the readiest goods being upon the ground of his lands of Fortoun poinded, for payment of an annualrent which Spottiswood had furth thereof, for diverse bygone years. It was *alleged* he had not called all parties having interest, to wit, Patrick Hepburn of Newmills, whose interest he could not mis-know, because he had comprised the lands; and, in his comprising, this pursuer compeared, and his annualrent was reserved. It was *answered*, That the process of comprising made him not a necessary party unless he were seized; and, therefore, he not being seized, this pursuer had no necessity to warn him; which answer the LORDS found relevant. Thereafter the Laird of Wauchtoun being admitted for his interest as superior to Fortoun, and having declarator of his liferent, *alleged*, that no decret could be now given for poinding of the ground during Fortoun's lifetime, because Thomas Spottiswood's sasine being only a base infestment, not confirmed by the superior, and not having taken effect by possession before the said Laird of Fortoun's liferent fell, and was declared to appertain to the pursuer, the land which was now fallen in his hand as superior, by declarator, could not be burdened with the said private annualrent, no more than if another had been infest by Fortoun, and confirmed by the superior; or if he resigned the lands in the superior's hands *ad perpetuam remanentiam*, the ground could not thereafter have been poinded for a private annualrent, which had taken effect by possession. Notwithstanding whereof the LORDS repelled the exception; and found, that the gift of liferent and declarator could not stay poinding of the ground for the annualrent; the rather because the pursuer had registered his contract, and charged Fortoun to make payment before Wauchton's declarator.

Fol. Dic. v. 1. p. 141. Haddington, MS. No 1677.

No 115.
Found that,
in a poinding
of the ground,
it was suffi-
cient to call
the defender

1631. *February 1.* CUNNINGHAME *against* WILLIAMSON.

GILBERT WILLIAMSON being convened as heritor of a tenement of land, and the present tenants and possessors thereof, by Henry Cunninghame, for poinding of the ground for an annualrent, wherein he was infest out of the land;

wherein the defender *alleging*, that he who stood heritably infeft, and in possession of the land, not being summoned to this action, no process ought to be granted therefor; for albeit the pursuer *replied*, that Gilbert Williamson, who was convened, was heritably infeft, so that he needed convene no other but him and the present possessor; yet he *duplied*, that his right was under reversion, so that his author, who still remained heritor, ought to be convened to defend in this pursuit, the absolute right being yet consisting in his person. THE LORDS found, that this defender being infeft, albeit under reversion, there was no necessity to convene any other alleged heritor; for if it were so found, there were a like reason to convene that heritor's author. And as to the reversion, the pursuer had no necessity to know the same, for it might be discharged or not as they pleased among themselves; but if that person, or any other, pleased to compear for his interest, he might be admitted.

Act. *Cunninghame.*

Alt. —.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 141. Durie, p. 562.*1636. *January 19.*OLIPHANT *against* TENANTS.

ONE Patrick Oliphant, upon an infeftment of annualrent granted to him by Sir James Oliphant, pursuing the tenants of the land for pointing of the ground; it was found by the LORDS, that no process could be granted in this action, nor the like cases (as was alleged in this process) while the party, viz. were summoned, who, in the time of the raising of this summons, stood heritably infeft in the lands libelled; neither was the reply respected, whereby the pursuer *replied*, that he needed not to summon him, seeing his heritable infeftment is but a base infeftment, granted to be holden of the giver, and was not granted by the immediate superior; so that the said heritor's right being only made by a mediate superior, he had no necessity to summon him, but it was enough to summon the persons who were heritors by infeftment from the mediate superior, which reply was repelled; and the like necessity found to cite heritors from the mediate superior, as those who were infeft by the immediate, seeing their sasines were alike extant in the public register.

Act. *Cunninghame.*Alt. *Oliphant.*Clerk, *Hay.**Fol. Dic. v. 1. p. 141. Durie, p. 787.*

No 115.

being infeft, although under reversion; and that there was no necessity to convene any other heritor, because thus it would be as reasonable to call the heritor's author; nor had the pursuer any necessity to know of the reversion, because it might be discharged.

No 116.

In a pointing of the ground, no process was found till the party was called, who, at the time of the summons, stood heritably infeft in the lands; although the pursuer replied that there was no necessity to summon him, as his heritable infeftment was but a base one, granted to be holden of the giver. The heritor must be called, not the superior.