

No 4. and of the tenants goods being thereupon ; and it is a novelty to grant personal execution against a stranger, or any who is a singular successor :—THE LORDS repelled the allegiance, and sustained this personal pursuit, for payment personally against the defenders, the pursuer proving, that they intromitted with the duties of the lands, and that the quantity of their intromission extended to as much as should satisfy yearly the annualrent acclaimed ; for the Lords held the defenders in no better case, than if naked tenants had been personally convened to pay this annualrent, *quo casu* they would have sustained the process ; and with the like reason it was found, process ought to be sustained against the defenders : And the LORDS declared, that they would keep this decision thereafter in all the like cases, whensoever any should occur.

A.C. Heriot.

Alt. Stuart &amp; Nicolson

Clerk, Gibson.

Fol. Dic. v. 1. p. 45. Durie, p. 836.

1670. February 1.

WILSON against RUSSELL.

No 5.  
An action at the instance of an annual-renter who had a poinding of the ground, was sustained against the tenant personally, after his removal.

WILSON being infest in an annualrent in the lands of \_\_\_\_\_, and having obtained a decret of poinding the ground ; thereafter, Russell, being a creditor, did arrest the mails and duties in the tenant's hands, which were due to the master ; and pursuing to make arrested goods forthcoming, the tenant being removed off the ground with his whole goods : It was *alleged* for Wilson, That he ought to be preferred, because his decret of poinding of the ground was before the arrestment, and being a real diligence, did affect the whole duties payable to the master.—It was *answered* for Russell, That the tenant being removed with the whole goods, such decreets and letters being only to poind the ground, and the goods thereon, could not affect him nor his goods.—THE LORDS did prefer Wilson, the annualrenter, and found he having done prior diligence, whereby he might have poinded the tenant before he removed, albeit he did prejudge himself of all the execution against the tenant's goods, after they were off the ground, yet *quoad* the duties payable to the master, for which he might pursue him *personali actione*, he was not prejudged from the benefit thereof by the tenant's removal : But the decret of poinding of the ground, and letters thereof, being a real execution prior to the arrestment, made him preferable to the arrester, as to the duties for which he was liable to the common debtor.

Fol. Dic. v. 1. p. 45. Gosford, MS. No 241. p. 98.