

1662. June 26.

WILSON *against* THOMSON.

WILSON having obtained decret against Thomson, for pointing of the ground of a tenement of land, Thomson suspends on this reason, that the charger's infestment is base, and before it was clad with possession, the suspender was publicly infest, and thereby excluded the base infestment though prior. The charger *answered*, That the reason ought to be repelled; because he had used citation upon the base infestment, before the public infestment, by which citation, *res fuit litigiosa*.

THE LORDS repelled the reason, in respect of the answer, and found the base infestment validate by the citation, whereupon the decret followed.

Fol. Dic. v. 1. p. 88. Stair, v. 1. p. 115.

* * * The same found in No 2. p. 1260.

No 14.
Base infestment found validated from the date of citation for pointing the ground.

1666. June 15.

SIR ROBERT SINCLAIR *against* LAIRD OF HOUSTON.

SIR ROBERT SINCLAIR pursues a pointing of the ground, of the lands of Leni, upon an old annualrent of 20 merks, constitute above 100 years ago. Houston *alleged* absolvitor, *1st*, Because he bruiked these lands past prescription, peaceably, without any pursuit upon this annualrent. *2dly*, Because this annualrent was base, and never yet clad with possession; and his infestment was public. It was *answered* to both, That the pursuer produced a decret of pointing the ground in *anno* 1608. Since which, the pursuer's minority being deducted, it is not 40 years. Likeas, there is produced a precept of pointing for the said annualrent. It was *answered*, That the decret in *anno* 1608 was only against the tenants and possessors, and so is null, the heritor not being called. It was *answered*, *1st*, That albeit the decret had been defective, for not calling the master, yet it was sufficient to interrupt prescription. *2dly*, It was sufficient to give possession, and to validate a base infestment by a civil possession; for as natural possession, by the tenant's payment, would have been sufficient, though without their master's knowledge or consent; so a decret, yea, a citation, against them, is sufficient for a possession, as being equivalent to a natural possession; and albeit the proprietor could not be prejudged, as to the constituting an annualrent, in the point of right, not being called; yet as to the point of possession, the right being constitute, he might. *3dly*, Albeit the heritor must be called, when his ground is first affected with an annualrent, *in attinenda possessione*, yet if the annualrenter be in possession, he may continue the same, without calling the master, as well as in teinds, thirlage, &c. And here the old precept of pointing was evidence sufficient of a prior possession, *in re tam antiqua*.

THE LORDS found, that the decret was possession sufficient to interrupt prescription. See PRESCRIPTION.

Fol. Dic. v. 1. p. 88. Stair, v. 1. p. 378.

No 15.
A decree of pointing the ground against the tenants and possessors, though the heritor was not called, found sufficient to validate a base infestment, and to interrupt prescription.