1628. *July* 11. LADY EDNAM *against* L. EDNAM. No 7.

THE act 36th, Parl. 1469, relates only to poinding upon moveable debts, and not to poinding of the ground, which the Lords found did affect the ground, and all the goods thereon, until all bygones owing to the poinder should be satisfied, and that without regard whether the tenant was in arrear to his master or not. They found, that *evicta et illata* belonging to strangers, might be poinded on the ground. See No 6. p. 1277.

Fol. Dic. v. 2. p. 96.

*** This case is No 31. p. 8129. *voce* LEGAL DILIGENCE.

1628. *November* 21. WATSON *against* REID. No 8.

A DECREE of poinding the ground is chiefly directed against the ground itself, and consequently only against the possessors; and therefore may be put in execution against it, in whose hands so ever it be, without necessity of taking a new decree against the present possessor, that the moveables thereon, and the ground right thereof, may be apprised.

*** This case is No 17. p. 10510. *voce* POINDING.

1629. *July* 8. STEWARTS *against* HOME. No 9.

POINDING of the ground, for annualrent, cannot be granted but out of the lands wherein the pursuer was infeft, although the lands be united to the granter of the infeftment of the annualrent, except they be contiguous; for no vassal may make an union.

Auchinleck, MS. p. 160.

1632. *March* 2. L. GARTHLAND *against* LO. JEDBURGH. No 10.

THE Lord Jedburgh having wadset to the Laird of Garthland some land, received a back-tack for payment of 1200 merks yearly. Garthland raised a summons against him for payment of the back-tack-duty, wherein he concluded, likewise, to have the ground poinded for it, for all years to come. Which conclusion the LORDS would not sustain; for the pursuer being infeft in the property, could not seek his own ground to be poinded for any thing due to him out of the said lands.

Spottiswood, (POINDING.) *p. 232.*

*** Durie reports this case:

No 10. 1632. *February* 26.

GARTHLAND being infeft in the lands of Swynside by the Lo. Jedburgh, under reversion, and setting back-tack for a certain duty, pursues him and his tenants to hear and see declarator upon his heritable right decerned, and upon his right to the back-tack duty, and that he may have letters to poind the ground therefor; and failing of moveables, that he might comprise the lands, and right of reversion thereof; wherein the LORDS found, that the pursuer could not have action to crave that part of the conclusion of the summons, anent the poinding of the ground, for the back-tack duty; for he being heritor of the lands, he could not seek that ground, whereof he was heritor himself, to be poinded, albeit that his heritable right was under reversion, and albeit he craved this poinding, that he might comprise the reversion; for they found, that he ought to seek decreet for his back-tack duty, which being decerned, he might poind the tenant's goods, or those against whom he should recover sentence, or comprise the reversion therefor; but that he could not seek the ground to be poinded, he being heritor, for that tack-duty set by himself as heritor; but, after sentence obtained for that back-tack duty, he might poind, as said is. See 6th March 1632, betwixt these parties, No 45. p. 915.; and 2d March 1631, betwixt them also, No 6. p. 1278. This cause being again called *in præsentia Dominorum*, the decision here noted was renewed; and it was found, that the heritor could not desire the goods of his tacksman, nor of his subtenants, to be poinded, by this pursuit for the tack-duty, but that he might and ought to pursue personally therefor; and sentence being obtained thereon, he might then poind his debtors therefor, as use is.

Durie, p. 575.

1634. *November* 14. M'NAUGHTON *against* M'NAUGHTON.

No 11.

NICOLAS M'NAUGHTON having obtained a decreet for poinding of the ground of N, for an annualrent of 200 merks due to her out of the same; John M'Naughton, heritor thereof, suspends her decreet; which suspension being discust in her favours, it was questioned, whether the suspender was personally obliged for payment of the said annualrent, or that the charger should only have recourse again to the ground.—THE LORDS found, that the suspender was personally obliged to pay her all the bygones for which he had suspended, and that it was in the charger's option either to poind the ground, or to suit the suspender personally; although some were of opinion, that she could not seek it of the suspender before she had sought to poind the ground, of which, if she got not payment, then she might have recourse against the suspender.

Spottiswood, (POINDING.) *p.* 232.