

## 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 defender1631. *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;