

*Act.* R. Cullen. *Alt.* H. Erskine.  
*Reporter,* Elliocock.  
*Diss.* Stonefield, Gardenston, Monboddo.

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1782. August 8. DOUGLAS HERON and COMPANY against JOHN and HUGH PARKER.

COMPETITION.

Disponees in security with the disponder's personal creditors, who had executed a pointing of unripe crops.

[*Fac. Coll. IX. 135; Dict. 2868.*]

BRAXFIELD. It is not much disputed, that, in a pointing of the ground, there would be a right to the crop; but it is said that this is a right of annualrent. It is an infestment of annualrent, and also gives a disposition to the lands themselves, and so a pointing of the ground is competent. The real creditor, in such a case, is preferable to the personal. In the case of *Dr Webster*, it was found that an infester in annualrent might come in and claim a preference over a personal creditor as to rents of tenants. I do not see what difference it makes that the heritor himself, and not the tenants, is in possession. It is admitted by the respondents, that there could be no pointing of the ground, because no rent was due. This of itself shows that the creditor-infester had a right to sequestrate.

GARDENSTON. I found my judgment on this simple proposition, that an infestment in security goes to rents, but not to crops. A man may, by industry, make the produce of the ground ten times the value of the rent.

KAIMES. There is a material difference between the tenant and the proprietor. For the tenant is not debtor, but the proprietor is.

MONBODDO. A pointing of the ground could not take place, because no interest was due. The creditor-proprietor under reversion had his remedy, both by affecting the rents and by removing the reverser, and entering into possession. This sequestration creates a hypothec, which a creditor cannot have.

KENNET. In the case of *Dr Webster* the only thing done was to prefer to the rents *in medio*.

On the 8th August 1782, "The Lords preferred Douglas Heron and Company;" altering their interlocutor of 2d March 1782.

*Act.* Ilay Campbell. *Alt.* A. Rolland.

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