

voluntary deed of old Lanton's to secure Sir Robert Stuart, seeing the retrocession was given him to that very effect, to pay and receive the debts wherein his son young Lanton stood bound for him, whereof this of Sir Robert's was one; whereas Campbell, the inhibitor, was not a creditor to the son, but only to old Lanton the father, and so could have no benefit by the inhibition against this right. *2do*, Objected against Sir Robert, They were confirmed before he attained possession. *Answered*, His base infestment was made public, *1mo*, By a decret and rollment of the Barón-court. *2do*, By a summons of mails and duties before the Lords, executed prior to their confirmation. THE LORDS shunned to go upon the Barons decret, because they oft-times pass without citation, and it was repelled in Andrew Bruce's case; but they found the execution on the summons sufficient to make the base infestment public, and to clothe it with possession. *3tio*, They objected nullities against Sir Robert's saine on some vitiations and razures in the parchment; but the Lords, after inspection, repelled the same. There were some other points in this cause which the Lords appointed to be debated in presence. See INHIBITION.

Fol. Dic. v. 1. p. 88. Fountainhall, v. 2. p. 104.

* * * See CONFIRMATION. See COMPETITION.

SECT. IV.

Publication by Confirmation.

1627. November 17.

L. CLACKMANNAN against BURN.

IN an action for pointing of the ground for an annualrent disposed out of the same, at the instance of the Laird of Clackmannan and Burn, the Lords preferred an infestment of the property alleged on by the defender comparing in this cause, albeit granted by a base holding of the giver thereof; as the pursuer's infestment of annualrent was also granted to be holden of the grantor; both the infestments proceeding from one author, viz. L. Balmamoon; to the pursuer's infestment of the said annualrent, which was posterior to the excipient's infestment of the property; seeing the said prior infestment of the property was clad with possession; neither was the reply sustained, whereby the pursuer alleged, that albeit his infestment of annualrent was posterior, yet seeing it was confirmed by the King's Majesty, who was superior of the lands, before ever the infestment of the property was clad with possession, and before any confirmation, therefore he ought to be preferred, his right foresaid becoming public by the confirmation, which confirmation preceded any possession acquired by the defender of the

No 20.

A base infestment of property, clothed with possession, preferred to a base infestment of annualrent, though confirmed by the King, before possession was obtained upon the former. The confirmation to be holden of the grantor only, not of, the superior could not make it public.

BASE INFESTMENT.

No 20.

property; which reply was not respected, but the first infestment preferred, albeit not clad with possession before the pursuer's confirmation, being not the less clad with possession at any time when the pursuer had no possession; and albeit the defender's infestment was not confirmed, yet it was preferred to the posterior infestment of the annualrent confirmed before the defender's possession; and the LORDS found, that the confirmation made not the pursuer's infestment public, seeing it was granted to be holden of the giver's self, and not of the superior.

Act. Hope.

Alt. Aiton & Nairn.

Clerk, Hay.

Fol. Dic. v. 1. 88. Durie, p. 314.

1628. January 30.

L. CLACKMANNAN against L. BALNAMOON.

No 21.
Found in
conformity
with No 20.
supra.

IN an action of poinding of the ground, at the L. Clackmannan's instance, against L. Balnamoon, an exception being proponed for Arbuthnot of Findoury, upon an infestment of an annualrent, out of the lands libelled, by virtue whereof, he was year and day in possession of the said annualrent, out of the lands contained in his infestment; whereby he *alleged*, That the lands could not be poinded at the pursuer's instance, for the pursuer's annualrent, but with reservation of this excipient's right. This exception was found relevant, notwithstanding of the reply, That the pursuer *alleged*, that his infestment was prior to the excipient's, by the space of an year, and both the said infestments being base, his priority behoved to give him preference: Likeas he *alleged*, that his right was not only prior, but was also in effect made public, by confirming of the same by the King's Majesty, and registration of his sasine thereof in the public registers; which confirmation, albeit the infestment was granted to be holden base of the giver, with the registration foresaid of the sasine, being insert in public registers, made the obscurity of his right to cease: Likeas he was in possession by receiving of a term's annualrent, from the giver of the infestment, before the excipient; all which was repelled, seeing he was not year and day in possession before the excipient's right and possession; likeas the LORDS found the said confirmation and registration, made it not public, the holding being base.

Act. Hope.

Alt. Gibson.

Clerk, Hay.

Fol. Dic. v. 1. p. 89. Durie, p. 335.