

never infeft himself, and so could grant no real right ; whereas he was infeft by charter from the superior.

It was REPLIED, That the common author having a disposition, which was a personal right, he might assign the same ; which being intimated by a seisine taken therein, he could not thereafter assign the same to his prejudice.

The Lords found, that the common author, having no real right in his person, could not grant a right of annualrent, to be holden base of himself ; and preferred Smith, as being infeft by the superior, as assignee to the procuratory of resignation.

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1676. June 20.

VEATCH *against* PALLET.

In the preceding process betwixt these parties, wherein Veatch was donatar to Sanderson's escheat ; being preferred to Pallet for the sums contained in his horning, out of the first of the sums contained in Sir George Maxwell's bond, granted to Pallet, who became debtor to him in place of Colonel Stewart, against whom Pallet had got sentence ; thereafter it was craved that he might be preferred to the annualrent, as well as the principal sum ; seeing, by the Act of Parliament, after denunciation, annualrents are due, albeit the bonds bear none.

It was ANSWERED, That the Act of Parliament makes only the debtor himself, who is denounced for not-payment, liable in annualrent ; but Pallet being a lawful creditor, and, by his diligence in England, having constituted Colonel Stewart his debtor, and thereafter Sir George Maxwell becoming debtor to him *proprio nomine*, to punish him who was nowise liable for another's disobedience, was contrary to all law.

The Lords did prefer the donatar, not only to the principal, but to the annualrents. Which seems hard, seeing the reason of the Act could not militate against Pallet, who was never *in mora*, nor liable.

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1676. June 29.

JAMES CRAWFORD *against* HELEN WATSON.

HELEN Watson, being confirmed executrix-creditor to her husband, Alexander Bell, by her contract of marriage ; but conjunctly with the said James Crawford, and some others, creditors of her defunct husband, was pursued by Crawford, as vitious intromissatrix, in so far as she had intromitted with more than her just proportion of the moveables ; they being divided amongst the whole creditors confirmed.

It was ALLEGED, That, in the confirmation by the commissaries, it was declared, that notwithstanding they were all conjunct executors-creditors, yet it was with that express quality, that she should have the preference, in so far as she was executrix by her contract of marriage ; which gave a right to her whole intromission, not exceeding the same.