

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.

It was REPLIED, That the commissaries could give no such privilege by their confirmation; their power being only to grant the title and office of executrix; but without a process, could not prefer one creditor to another.

The Lords found, that the relict having intromitted by virtue of a title, albeit the commissaries, by their confirmation, could not prefer her; yet, she being a privileged creditor by law, as to the debt due by the contract of marriage, as she would be preferred in a double pouding, she might so found a just defence against this pursuer, upon the foresaid privilege.

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1676. July 5. The EARL of ABOYNE, and the LORD PITTRICHIE, against
The LAIRD of GIGHT.

IN the above-mentioned action, at the instance of my Lord Pittrichie, after decret pronounced in Pittrichie's favours, finding the minute null, because of non-performance on Gight's part; notwithstanding thereof, the Lords, upon an offer to make a sufficient security and performance, did grant a certain term for production of such securities as would make a perfect progress; and, after production, both parties being to be heard, and the Earl of Aboyne admitted for his interest,—it was ALLEGED for Pittrichie, That the writs produced could not satisfy the minute:—

1st. Because Gight is obliged to dispoise to Pittrichie the lands of Auchincrive and Shalmanae, with the tennds thereof, by a collateral security flowing from himself, to be holden of the king; whereas he himself hath no right from the king; but only a security by a disposition, from the comprisers of his estate to the Laird of Phedertie, and from Phedertie to Gight, but which are to be holden base.

2d. It was ALLEGED for the Earl of Aboyne, That there being a decret *in foro contradictorio* in favours of Pittrichie, he was *in bona fide* to contract with him; and, being a singular successor, Gight could never be reponed to his prejudice, and therefore craved that the Lords would declare, that, albeit it should be found that Gight had satisfied by production, it could only be the ground of a personal action against Pittrichie, but could never militate against Aboyne's real right, nor reduce the same.

It was REPLIED to the first, That the minute was opposed; which is not conceived by way of obligation, to dispoise the lands to be holden of the king, but only *impersonaliter*;—viz. That Pittrichie should have these lands sufficiently secured to him, to be holden of the king; which can never be controverted by himself, or any other person whatsoever; seeing, he hath not only a gift of recognition but a declarator passed thereupon, whereby he is already the king's immediate vassal: and now having a perfect right from the whole comprisers, and Gight himself, unless he can condescend that some other than the king, Gight, or the comprisers, hath a better right, he can never quarrel the production, or the security offered.

It was REPLIED to the second, That the Earl of Aboyne can be in no better case than Pittrichie; because, albeit he be a singular successor, yet his right