

1676. July 26.

ELLISON *against* CARMICHAEL.

CAPTAIN ELLISON being infest in an annualrent out of the lands of Thurstoun in September, White of Thurstoun gave an infestment to Thomas Dalrymple, his good-brother, in November thereafter, for the behoof of himself, Bailie Carmichael, and other creditors; to which infestment Bailie Carmichael hath now right: Likeas White did put the said Thomas in possession of the most part of the lands that were in his own labouring, in December thereafter; and both infestments became public, by confirmations, upon the same day. There is now a competition betwixt the infestment of annualrent, and the said infestment of property. It was *alleged* for Bailie Carmichael, That his right of property must be preferred, because it was clad with natural possession; and the infestment of annualrent had no possession. It was *answered* for the annualrenter, That an infestment of annualrent, or any other base infestment, is a right of itself, without possession; but a public infestment is preferred thereto, as being a private simulate right, *retenta possessione*; but not when there is no ground of simulation, being granted to a stranger and a real creditor, and when there could be no possession attained, because there intervened the infestment of property, clad with possession before Martinmas, which was the first term of payment of the annualrent; which hath been formerly sustained: Likeas there is great reason for it, since the act of Parliament for registration of sasines, *whereby they are null, if not registered within 40 days*.

THE LORDS preferred the annualrenter, and found, That there having been no delay of attaining possession, or ground of simulation, the base infestment was valid, being prior and preferable to the posterior base infestment clad with possession.

There was also much debate concerning the way of the base infestment of property its obtaining possession, as being granted by a notour bankrupt *in fuga*, who could not prefer one creditor to another: All which was denied; but the Lords proceeded not upon that ground, and so referred it not to probation.

*Fol. Dic. v. 1. p. 87. Stair, v. 2. p. 460.*

1686. December 9.

RAMSAY *against* KINLOCH and CHAPLAIN.

CARSE reported the case betwixt Sir Andrew Ramsay of Abbotshall, and Alexander Chaplain and Kinloch, who objected against one of the apprisings he produced, That the decret of comprising, and the charter and sasine, were all upon one day, *viz.* the 29th of June 1655, which was impossible. *Answered*, That the act bringing in all comprisings, led within year and day, not being then made, creditors used great haste to be the first appriser, (the second carrying nothing but the *jus reversionis* of the first); and, therefore, before the court of com-

No 12.  
Found in conformity with  
No 5-P. 1272.

No 13.  
A base infestment was taken on a certain day, and a public infestment on a comprising the next. The compriser alleged the base infest-