

of any party, yet that is not repeated in the statutory part, but only in the narrative; and an act of Council can derogate from no man's right, much less the King's.

No 20.

THE LORDS found the giving in of a signature could not bring in that party, without first obtaining a confirmation, unless all diligence had been used by the one, or precipitation by the other; but did not determine that point, whether the Exchequer was obliged to confirm according to diligence, and did resolve further to hear that point, whether infestments for relief of personal debts were valid from their dates.

*Fol. Dic. v. 1. p. 194. Stair, v. 2. p. 653.*

1680. February 26. Laird of CLACKMANNAN against The EARL of WIGTON.

BRUCE of Newton having infest Clackmannan for relief of his cautioneries for several of Newton's creditors, and having thereafter infest the Earl of Wigton for his relief as cautioner to other creditors, both infestments are confirmed by signatures past at the same time, whereupon both do now compete. It was *alleged* for the creditors, to whom Clackmannan was cautioner, That his infestment ought to be preferred, because his base infestment is prior, his signature of confirmation is *simul*, and it is first past the seal by a month's space, as it appears by the attest of the keeper of the seals to the charter, as use is. It was *answered* for Wigton, That both infestments being base, without possession, the confirmation only, by which they become public, makes them effectual rights, so that both their confirmations, past of the same date, must come in *pari passu*; and no respect ought to be had to the attest by the keeper of the seal, otherwise it should be in his power to prefer and postpone as he pleases, for which he hath no commission; and though his oath was taken, he is but one witness. It was *replied*, That the seal only perfects the confirmation, and is in place of the King's subscription; and albeit the dates be insert in charters, according as the signatures pass, yet it is not the signature that gives the right, otherwise no infestment by confirmation could be known or secured, but a naked signature would be preferred to a posterior sealed charter. Neither is there any hazard of the collusion of the keeper of the seal; because, when a signature passeth the seals, it is to be found recorded at the Privy and Great Seals in the Chancellery, and there is a minute kept of all the sealings of charters.

No 21.

The confirmation first expedite thro' the seals was found preferable, though the date of the charters was the same.

THE LORDS found the first expedite confirmation through the seals preferable, although the date of the charters were the same; and that the attest of the sealer was sufficient, unless it were controuled by the registers, or that the other party had craved to pass his signature as soon, and taken instruments upon the refusal, and collusion of the keeper of the registers and seals.

*Fol. Dic. v. 1. p. 194. Stair, v. 2. p. 765.*