

fine followed, and consequently payment made *quocunque tempore* makes the same public, and the real right clad with possession, the fine being prior to the donatar's right.

No 27.

*Fol. Dic. v. 1. p. 89. Gosford, MS. p. 29. & 37.*

1682. *January.* NISBET *against* SIR DANIEL CARMICHAEL.

JOHN NISBET, merchant in Edinburgh, being infest in an yearly annualrent of L. 72, out of the lands of Lumfdean, having pursued a pouding of the ground; and there being compearance made for Sir Daniel Carmichael, another creditor, it was *alleged* for him, That he ought to be preferred, because John Nisbet's right of annualrent being but a base infestment, Sir Daniel had led a comprising of the lands before the base infestment was clad with possession, and so was *medium impedimentum*, and could not be drawn back to the date of John Nisbet's infestment, in prejudice of his comprising; especially seeing he was thereafter publicly infest upon his comprising.—*Answered*, That the comprising being after John Nisbet's infestment of annualrent, and the discharge of a term's annualrent, albeit after the comprising, yet being before Sir Daniel was publicly infest, must be drawn back to the date of the infestment of annualrent, to clothe his right of possession; so that he having the first complete right, he ought to be preferred; a naked comprising being but equivalent to a personal right, was not such a *medium impedimentum* as to hinder the discharge of a term's annualrent to be drawn back to the date of the infestment; just as when a party grants an infestment of annualrent, and thereafter should grant a disposition of the lands to another person; if the infestment of annualrent be first clad with possession, before the party be publicly infest upon the disposition, or before a base infestment be clad with possession, the infestment of annualrent will be preferred.—THE LORDS preferred John Nisbet upon his infestment of annualrent.

No 28.

A party was infest in an annualrent base. Before he attained possession, another adjudged. The infester having got a year's annualrent, before the adjudger was publicly infest, the Lords preferred the annualrenter.

*Fol. Dic. v. 1. p. 89. Sir P. Home, v. 1. No 103.*

\* \* See Nisbet against Carmichael, No 586: *voce* COMPETITION.

1695. *February 15.* KEITH of Badincoth *against* FALCONER.

WHITELAW reported Helen Keith, and Gordon of Badincoth, her husband, *contra* Sir Alexander Falconer of Glenfarquhar and Scot of Logie, about the clothing of a base infestment with possession.—THE LORDS found Sir John Falconer's paying a year's annualrent of it, though he took no discharge but an assignation, and though he was not debtor in the annualrent, but had only purchased the lands out of which it was upliftable, was sufficient to make it public, even against Sir John's singular successors.

No 29.

An heritor paid a year's annualrent to a base infester, and took assignation to it. This found equivalent to a discharge,