

1693. *December 12.* SIR ALEXANDER COCKBURN of LANTON'S CREDITORS
against PATRICK HEPBURN of MONKRIG.

THE competition between Patrick Hepburn of Monkrig, and the other creditors of Sir Alexander Cockburn of Lanton, was reported. Hepburn craved to be preferred on his base seasine. They opposed, It was not clad with possession.

ANSWERED.—That, after his taking of seasine, he had received half a year's annualrent of his sum ; and, though it was for a term elapsed prior to the date of his seasine, yet it was sufficient to clothe his base infestment with possession ; seeing annualrent is not paid by virtue of the real right, but by the personal obligation in the heritable bond which is the ground and warrant of the seasine ; and if a citation on a summons for pointing the ground will make it public, much more the actual receipt of annualrent. And here there was half a year's interest owing, after the seasine as well as before it ; and if he had either given an indefinite receipt, or ascribed it to the payment of that half year subsequent to the seasine, it would have undoubtedly preferred him ; *ergo*, it must do it here.

The other creditors REPLIED, That nothing clad an infestment with possession but only annualrent for terms due after the seasine ; seeing *nulla sasina nulla terra* ; and his ascribing it to the prior term has consumed his election, and manifested his design, that he cannot now recur.

The Lords, thinking the point somewhat new, resolved to hear it in their own presence ; but inclined to find it not a public right.

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1693. *December 14.* CARRE of CAVERS against LORD POLWART.

CARRE of Cavers having charged the Lord Polwart, on his bond, he gave in a bill complaining of the clerk of the bills, who had presented horning on that registered bond ; seeing, by the act rescissory, in 1690, and the explanatory act in 1693, a superseder was given, both for principal sums and their annualrents, to all forfeited persons whose names were enumerated ; whereof he was one : And it was referred to the commission of Parliament, to consider how far they should be liberated of their annualrents ; and therefore, the Lords were not competent judges thereto, but behoved to remit it to the Commission's cognizance.

The Lords distinguished three cases. *1mo.* Of the principal sum and annualrents current during the forfeiture ; and as to these, the Lords were clear, that the Parliament had taken them out of the Session's jurisdiction, and made the Commission privative judges thereto. The *second* case was, as to annualrents fallen since the Revolution in 1688 ; and, as to these, the Lords generally thought there could be no question that these were due, and fell not under the Commission. The *third* was, of annualrent owing by the forfeited person, before the doom of the forfeiture and when they were still in possession of their estates. And here the Lords divided ; four of them thinking, that the Commission were also empowered to grant a superseder for these, and that the Lords could not