

No 16.
Found in
conformity
with No 14.
p. 1289.

1679. January 24. HAMILTON against SETON of GAIRLETOUN.

IN a competition betwixt these parties, both being infest in annualrents out of some tenements in Prestoun, Archibald Hamilton craved preference, because he was first infest. It was *answered* for Gairletoun, That Archibald's infestment was base, not clad with possession, until his infestment was public by confirmation. It was *replied*, That before Gairletoun's infestment was public, Hamilton had raised summons of pointing of the ground, and cited and insisted thereon, which hath ever been sustained as sufficient to validate a base infestment, where there is no suspicion of simulation, but a security for a true debt.

THE LORDS sustained the reply, and preferred Hamilton.

Fol. Dic. v. 1. p. 88. Stair, v. 2. p. 679.

No 17.
The citation
of a few ten-
ants was
found as suf-
ficient as if
the whole
had been cit-
ed, for all the
baronies con-
tained in a
base infest-
ment, though
distinct and
not united.

1691. December 9. Competition CREDITORS of LANGTON.

IN several cases in this competition, the citation of a few tenants was found as sufficient as if the whole had been cited, for all the baronies contained in the base infestment, though distinct and not united. *2dly*, That citations in pointing of the ground, *declaratorie*, before the term of payment, were orderly and not precipitate; and that a reserved clause of relief, upon a partial distress, made public by possession, &c. made the right public as to the whole, though the other distresses did not emerge till some time after; and though the execution and possession could only be according to the present distresses, and proportionally as they did emerge. This was not voted, but declared at pronouncing. See UNION.

Fol. Dic. v. 1. p. 88. Harcarse, No 626. p. 172.

No 18.
The bare exe-
cution of a
summons of
mails and du-
ties found suf-
ficient to
make a base
infestment
public.

1700. July 16. Competition CREDITORS of LANGTON.

RANKEILOR reported the competition betwixt Sir Robert Stuart of Allanbank, Lady Mary Kennedy, James Cockburn, and other creditors of Sir Alexander Cockburn of Lanton. *1mo*, It was *objected* against Sir Robert's right, that it was posterior to an inhibition served against Lanton by one Campbell. *Alleged*, Lanton was then denuded in favour of his son. *Answered*, He was retrocessed again, by which supervenient right the inhibition took place. *Replied*, The retrocession was qualified, that old Lanton might pay the debts for which his son stood bound with him, whereof Sir Robert's debt is one, and Campbell's is not, young Lanton not being an obligant in his bond. THE LORDS found inhibitions extended not only *ad acquisita*, to what stood in the debtor's person at the time of executing the inhibition, but likewise *ad acquirenda*, if it lay within the same shire where the inhibition was published, as has been oft decided: But found this was no

voluntary deed of old Lanton's to secure Sir Robert Stuart, seeing the retrocession was given him to that very effect, to pay and receive the debts wherein his son young Lanton stood bound for him, whereof this of Sir Robert's was one; whereas Campbell, the inhibitor, was not a creditor to the son, but only to old Lanton the father, and so could have no benefit by the inhibition against this right. *2do*, Objected against Sir Robert, They were confirmed before he attained possession. *Answered*, His base infestment was made public, *1mo*, By a decret and rollment of the Barón-court. *2do*, By a summons of mails and duties before the Lords, executed prior to their confirmation. THE LORDS shunned to go upon the Barons decret, because they oft-times pass without citation, and it was repelled in Andrew Bruce's case; but they found the execution on the summons sufficient to make the base infestment public, and to clothe it with possession. *3tio*, They objected nullities against Sir Robert's sasine on some vitiations and razures in the parchment; but the Lords, after inspection, repelled the same. There were some other points in this cause which the Lords appointed to be debated in presence. See INHIBITION.

Fol. Dic. v. 1. p. 88. Fountainhall, v. 2. p. 104.

* * * See CONFIRMATION. See COMPETITION.

SECT. IV.

Publication by Confirmation.

1627. November 17.

L. CLACKMANNAN against BURN.

IN an action for pointing of the ground for an annualrent disposed out of the same, at the instance of the Laird of Clackmannan and Burn, the Lords preferred an infestment of the property alleged on by the defender comparing in this cause, albeit granted by a base holding of the giver thereof; as the pursuer's infestment of annualrent was also granted to be holden of the grantor; both the infestments proceeding from one author, viz. L. Balmamoon; to the pursuer's infestment of the said annualrent, which was posterior to the excipient's infestment of the property; seeing the said prior infestment of the property was clad with possession; neither was the reply sustained, whereby the pursuer alleged, that albeit his infestment of annualrent was posterior, yet seeing it was confirmed by the King's Majesty, who was superior of the lands, before ever the infestment of the property was clad with possession, and before any confirmation, therefore he ought to be preferred, his right foresaid becoming public by the confirmation, which confirmation preceded any possession acquired by the defender of the

No 20.

A base infestment of property, clothed with possession, preferred to a base infestment of annualrent, though confirmed by the King, before possession was obtained upon the former. The confirmation to be holden of the grantor only, not of the superior could not make it public.