

**** N. B.** The Court had pronounced a similar judgment in the case of Stewart and others, Creditors of Sir John Douglas of Kelhead *contra* Douglas, in 1765, which is omitted in the reports of that year. See APPENDIX.

No 108.

S E C T. VIII.

Effect of Irritancies, &c. not ingrossed in the Infertment.

1664. December 1. EARL OF SUTHERLAND *against* GORDON.

AN irritant clause, *ob non solutum canonem*, contained in the disposition of feu, but neither in the charter nor sasine following thereupon, is not real, nor effectual against an appriser. It is otherwise, if sasine follow directly upon the disposition, in which case the disposition serves for a charter.

Fol. Dic. v. 2. p. 70.

No 109.

****** This case is No 61. p. 7229. *voce* IRRITANCY.

1706. July 7.

SIR HUGH CAMPBELL of Calder *against* The CREDITORS of HAY of Park.

IN the ranking of the Creditors of Park Hay, Sir Hugh Campbell of Calder founded upon an heritable bond of relief for several cautionaries he stood engaged in for Park, whereupon he had taken the first infertment; and craved preference, not only for the principal sums, annualrents, and expenses paid by him to the common debtor's creditors, and these annualrents and debursements stated as a principal sum bearing annualrent from the time of payment; but also sought to be preferred for the expenses of expeding his infertment, and making it effectual against the other competing creditors; because, his bond of relief doth expressly provide that his infertment shall not be redeemable till he be reimbursed, not only of all charges and damages in general, but also of the expense of his infertment; and his charter under the Great Seal repeats these obligements, and both it and his sasine expressly relate to the reversion in the way and manner as the same is contained in the bond of relief registered and made publick.

Answered for the other Creditors, However the expense of Sir Hugh Campbell's infertment might be the foundation of an action against Park Hay, it is inconceivable upon what ground it can be real against the estate, to the exclu-

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An heritable bond of relief provided, that the infertment to be expeded on it should not be redeemable till the cautioner should be reimbursed of all charges and damages in general. He was found preferable only for sums, annualrents, and expenses paid by him to the creditors of the common debtor, not for the expenses of his infertment, or of supporting his right in the competition.

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sion of other creditors; seeing there is no such provision in the infestment, which is only granted for relief of debts particularly therein enumerated. Nor doth it alter the case, that the infestment relates to the charter; seeing singular successors are only obliged to notice what is expressly and fully contained in the sasine; and the words of the charter, To be relieved of all cost, skaith, or damage, can only relate to the debts he stood engaged for. *2do*, Whatever might be pleaded as to the expense of expeding his infestment, it is absurd to pretend that the debursments in maintaining his right against the competing creditors ought to be sustained; seeing in competitions every creditor must bear his own burden of expenses for his own security.

THE LORDS sustained preference upon the infestment of relief for the principal sums, annualrents, and expenses paid by Sir Hugh Campbell to Park's Creditors, and allowed the same to be stated as a principal sum at the time of payment; but refused to sustain his claim of expenses for expeding his infestment and making it effectual against the other competing creditors.

Fol. Dic. v. 2. p. 70. Forbes, p. 124.

1711. November 27.

AGNES COLQUHOUN LADY MONTBODDO *against* HALIBURTON of Newmains, and JANET CAMPBELL, his Spouse.

No 111.

Found, That an irritant resolutive clause which was unusual, and not inserted verbatim in the precept and instrument of sasine, but only by general reference, could not prejudice a singular successor.

THE said Agnes being married to Irving of Montboddo in 1665, by their contract of marriage she disposes to him the lands of Kippock, &c. wherein she was infest as heir to her father, and he obliges himself to infest her in a liferent jointure out of his own lands of Montboddo; but it bears this clause, that if either of them failed in performance to one another of their several obligations, then this contract was to be void and null, in the same manner as if it had never been made, nor *in rerum natura*, and each party-contractor should enjoy and possess their own proper estates, as if the said marriage had never been solemnized. The husband was infest in the wife's lands by virtue of the precept of sasine contained in the contract; but the wife was never infest in his lands for her jointure, there being no precept for her, but only a procuratory of resignation, which was never expeded nor prosecuted. And he being in great debts, not only his own proper lands of Montboddo, but likewise those disposed to him by his wife, are evicted by his creditors, and adjudged from him; and he dying about the 1675, Janet Campbell's father, and others of his creditors, enter into possession of the lands that came by his wife, and Burnet of Alagarven purchased his own lands of Montboddo; so that Agnes, his widow, was debarred both from her own proper lands, whereof she had been heiress, and likewise from her liferent provided to her forth of her husband's lands. And