

1707. March 25.

WILLIAM INNES, Writer to the Signet, *against* JOHN EARL OF BREADALBANE.

\* \* The same case with the preceding as stated by Fountainhall.

INNES having right to an adjudication led by Sir James Stanfield, in 1682, against Lord Breadalbane, for L. 4500, he now pursues a declarator, that the legal of his adjudication is expired, and the lands are irredeemably his own. *Alleged*, This process is most odious, to carry away a vast estate for a small sum, and therefore any nullities were sufficient to stop the expiration of a legal; and here the annualrents and penalties were accumulated into a principal sum, to bear annualrent, at a term preceding the decret of adjudication, which is contrary to law, for they can bear annualrent only from the date of the decret, and no sooner; for to exact it sooner is *usura usurarum* and *anatocismus*, and reprobate by law. *Answered*, That the stating the annualrent, and bringing it to the term before the decret, is here but a month or two difference; and the decret doth not bear, that it is to carry annualrent from that term downward to the date of the decret, but leaves it to be regulate by law; so this can never be called the adjudging for more than was due, which uses to restrict apprisings, &c. to be alenarly a security for the sums truly resting, and cuts off all legal and penal advantages; but there is no ground for any such restriction here. THE LORDS repelled the nullity; and declared, with this quality, that if my Lord Breadalbane paid the sums due by the adjudication, betwixt and the 5th June next, the same should be purgeable till then. My Lord had also another defence, viz. that he had used an order of redemption within the ten years, which stopped the expiration of the legal; but, esteeming the accumulation to the term preceding a *corruptela*; he first insisted on that, and kept the order to the last place; because it would force him to offer and consign the money at the bar, which he feared might be accepted by the creditor. Where the adjudication expressly bore, that the accumulate sum should carry annualrent from the term preceding the adjudication, the Lords have found that sufficient to restrict the adjudger, and cut off the legal, as in the case of the children of Preston *against* Mr Thomas Lermouth advocate. But where it runs in general indefinite terms, without mentioning when the annualrents should commence; THE LORDS refused to restrict; as they found in the Lady Innerleith's process against the Laird of Cockburn, (*No 13. b. t.*); and the Seamen of Prestonpans against Doctor Smellholm; and in the case of the Creditors of Edinglassie, (*See VASSAL.*)

*Fol. Dic. v. 1. p. 8. Fountainhall, v. 2. p. 365.*

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In a declarator of expiration of the legal of an adjudication, where the accumulations had been made, as from the term preceding the date of the decret; the Lords did not annul the adjudication, but on account of this circumstance, and the unfavourableness of expired legals, they prorogated the legal for a few months,