

No 262. was never infest upon the heritable bond : His right was merely personal. The case would have been the same, in so far as regards the point in discussion, as if there had been no clause of infestment in the bond ; but Mr Scot had been possessed of a personal bond of the same value. His assignation, surely, to such a personal bond in 1716, could not have been affected by his bankruptcy in 1726.

Although no infestment had been taken on the original bond, the conveyance from Mr Scot was complete. He was by it effectually divested of any personal right he had, as much as after the infestment was taken. If Mr Scot had assigned this right to another, and he to a third, till by progress it came into Charteris's person, and then infestment had been taken, posterior to Scot's bankruptcy, it could not be maintained, that the taking of infestment avoided all the intermediate rights, which were absolute and complete without respect to any infestment. The direct conveyance, then, to Charteris from Mr Scot, can make no difference in law. If Mr Scot had been himself infest, he would not have been denuded by a simple disposition, without procuratory and precept. Had infestment followed on his disposition, it must have been upon procuratory and precept granted by him ; and the taking of the infestment would, abstracting from the statute, have afforded a preference ; therefore, in force of the statute, would have been annulled.

The statute has indeed imposed a nullity upon the presumed frauds, which might happen between debtors and creditors, by keeping transactions latent ; but the transactions are only such where infestment is necessary to denude the disponent, and afford a preference to the receiver, in prejudice of other creditors. When the statute goes this length, it has a most valuable effect ; but it ought not to be extended to cases which neither do, nor, by construction, can be understood to be comprehended under it.

THE LORDS adhered to the interlocutor of the Lord Ordinary.

Lord Ordinary, *Newball*. For the Creditors, *Ro. Craigie*. For Charteris, *Ja. Graham*.
Fol. Dic. v. 1. p. 86. Session Papers in Advocates' Library.

No 263.

1735. *November*. TRUSTEES OF MATHESON'S CREDITORS *against* SMITH.

AN heritable bond was dated in June 1727. Infestment was not taken on it till April 1729 ; by which time the granter had become bankrupt. The Court decided, as in the case of Merchiston No 261. *supra* ; that the security must be held to be of the date of the sale ; consequently that it afforded no preference, and must be considered as a mere personal security. *See* The particulars *voce* PERSONAL and REAL.

Fol. Dic. v. 1. p. 86.