

and infest that second disponee, he would be preferred to the first; but he said that if that second disponee should first acquire his disposition, and then infest his author, the first disposition would be preferred; but I doubted of this last, because infesting the author vested the property in him, whereof he could not be denuded by the personal disposition; but in this case the author's infestment would have accresced to Blackwoodhouse, since both he and Chatto were infest, but erroneously.—15th July 1737, The Lords adhered as to the general point, but remitted to the Ordinary to hear parties on the specialties, particularly that Garthshore obtained his charter *pendente processu*; 2dly, that it was not a charter of sale, but of adjudication.

No. 4. 1737, Nov. 8. CAPTAIN CHALMERS *against* SIR J. CUNNINGHAM.

See Note of No. 14. *voce* ADJUDICATION.

No. 5. 1738, Jan. 10. CREDITORS of Mr PATERSON, *Competing*.

ON report of Lord Newhall without naming parties, Whether on the statute 1696 anent notour bankrupts, the executing a caption and taking a bond of presentation was imprisonment to bring him within the description of the act? the Lords were divided, but on the vote found it was in law imprisonment.—N. B. I find Mr Paterson Prestonhall was the bankrupt.—9th July 1736.

The Lords, notwithstanding of the above decision in the case of Blackwoodhouse, adhered to the Ordinary's interlocutor, finding that Sir William Baird's heritable bond fell not under the act 1696, because Mr Paterson's right was only personal, and was effectually conveyed by the heritable bond and assignation without infestment, as they found in the case of Colonel Charteris and Creditors of Blair,—for here was no complete real right competing with them; and they found that the infestments given by Lord Royston in 1733 were not quarrellable in the acts 1621 or 1696, and these infestments would have preferred them to any subsequent infestment these other creditors could have got, as they got none.—21st June 1737.—*Vide* 22d July.

Adhered to the former interlocutor of the 21st June last, in so far as concerned the property held of Lord Royston, but found the petitioners preferable upon the superiority that was in Lord Prestonhall's person, which is agreeable to our last judgment in the case of Blackwoodhouse.—22d July 1737.—*Vide* 10th January 1738.

This case was decided 22d July 1737; and upon the reclaiming bill the question was concerning the superiority, in which Kilconquhar was infest, Whether it is only a nominal right, that might be absorbed at pleasure by the annualrenters, or if it was what the petitioners called patrimonial? The Lords adhered to the former interlocutor, but found all the adjudgers within year and day preferable *pari passu*. (See Note of No. 9. *voce* RANKING AND SALE.)

No. 6. 1741, Feb. 24. CREDITORS of EARL of BUCHAN *against* LORD CARDROSS.

LORD CARDROSS having an assignation to mails and duties completed by intimation and possession before any adjudication of these lands,—the Lords preferred Lord Cardross to the adjudgers, their adjudications not being completed by infestment.