

---

**INFESTMENT.**


---

**No. 1. 1745, June 19. CAMPBELL *against* CAMPBELL.**

THE deceased Ronald Campbell was infest in Auchinbreck estate in an annual rent effeiring to L.7000, and in a year thereafter the annual rent and 4000 merks of the principal were paid upon a discharge and renunciation, which remained in the debtors hands 16 years, and till after the creditor's death,—and at counting with this Ronald the son, Auchinbreck was found debtor in a larger sum, and instead of a new heritable bond the former discharge and renunciation was given up, and the whole L.7000 was by a separate writing declared resting, but no infestment or diligence had intervened. Now in the ranking of this estate it was objected to the L.7000 debt by giving back the discharge, but upon report of Kilkerran the objection was repelled.

**No. 2. 1750, Feb. 15. CLAIMS ON SIR JAMES KINLOCH'S ESTATE.**

See this case No. 13. *voce* FORFEITURE.

---

**INHIBITION.**


---

**No. 1. 1734, Jan. 10. HAY of Strowie *against* CREDITORS of SIMPSON.**

THE Lords adhered to their preceding interlocutor sustaining the objection against Dr Hay's inhibition, that it was not executed at the head burgh of the Regality of Dunfermline, and repelled the allegiance of *communis error*.

**No. 2. 1737, June 29. CREDITORS of ROSEBERRY *against* GEDDES.**

See Note of No. 7. *voce* FRAUD.

**No. 3. 1737, Nov. 16. LADY MARGARET, &c. PRIMROSE *against* THE COMMISSARY CLERKS.**

THE question was, Whether an inhibition taken out by Sir William and Alexander Nairne upon a depending process as liable for taking an insufficient cautioner in a confirmation should be recalled or not? It carried by a great majority to recall the inhibition *renitente* Justice-Clerk, Drummore, and I think Kilkerran. Amongst other reasons for recalling, Arniston gave one reason, that no prohibitory diligence of that sort should go against any trustee or officer for any thing done in execution of their trust, and instanced the case of the Marchioness of Annandale, against whom the Lords granted letters of

arrestment on a process against her as executrix to her husband, but which was reversed by the House of Lords. The observation in general I agree with but not universally, for, *causa cognita*, I see no reason why inhibition may not go out against an officer if there be hazard of dilapidation, but that cannot be applied to this case.

No. 4. 1738, Jan. 26. *CORSAN, &c. against MAXWELL.*

See Note of No. 16. *voce* ADJUDICATION.

No. 5. 1738, Feb. 14. *HARVIES against GORDON.*

I was in the Outer-House. I am told the Lords found the sum decerned for not being libelled was not secured by the inhibition upon the dependance.

No. 6. 1738, June 27. *PRICE against MAJOR JOHNSTONE.*

I KEEP these papers because the case is new, though it may frequently occur. The Lords would not recall or restrict the inhibition unless the petitioner would give evidence that no debt was due, or how much, neither would they oblige the pursuer to insist before the day that he should think fit to fill this in his summons, but ordered him to give the petitioner a copy of his summons with the day filled, that the petitioner might take his remedy by calling upon his copy after that day, or raise a summons as accords.—N. B. It had some influence that the pursuer was willing to pass from his arrestment on the petitioner's own bond, though that could have no effect on the point of law.

No. 7. 1742, Feb. 5, 17. *A. against B. (BROWN against CROKAT.)*

AN inhibition being raised on a gratuitous bond payable after the granter's death failing heirs of his body, which the Lords thought they could not have given *causa cognita*, they therefore would not sustain it against an onerous purchaser; and 17th February adhered and refused a bill without answers, though it was appointed to be seen as to other points.

No. 8. 1742, June 2. *CREDITORS of STEWART against DUNBAR.*

THE accountants usually employed in this Court, viz. George Boswell, Francis Farquharson, and Andrew Chalmers, being called by order of Court, informed us that in making their schemes where creditors adjudgers are preferred upon an inhibition to infestments or other rights, posterior to their inhibition, but prior and preferable to their adjudications, they are in use to make schemes of division among the whole creditors, and next a scheme of division leaving out the creditors cut out by the inhibitions, and so much of the inhibiting creditors' sums falling to them by the second division, as they want by the first, they deduct from the shares falling by the first scheme to the creditors cut out, whereon they make the scheme according to the inhibiting creditors accumulate sums,—and agreeably to that report, we, 3d December 1741, upon a division preferred Burgie for his accumulate sum in his adjudication, agreeably to our late decision betwixt Corsan