

1738. January 10. THOMAS BOYES *against* OGILVIE of Murthill.

HUGH BOYD disposed a tenement of land to his son-in-law James Scott, who sold a storey of it to Dr Scott in 1685, who sold it to William Crawford, and Margaret, his daughter, in 1688. Bain, a real creditor of Hugh Boyd, was infeft in the tenement in 1672 before James Scott's right; but Dr Scott acquired two debts of 600 merks of principal of Hugh Boyd, on which there had been an inhibition in 1671 before Bain's debt; and upon these bonds he adjudged the tenement from Boyd in 1699; but was not infeft upon the adjudication; and Mr Thomas Boyes as creditor to Dr Scott by a bond in 1702, adjudged that adjudication from him and was infeft. Bain having upon his heritable debt pursued maills and duties against William and Margaret Crawfurds, they intimated their distress to Dr Scott, and inhibited him in 1697 before contracting his debt to Mr Boyes, and having charged him on his warrandice, he found Ogilvie of Murthill cautioner. This whole tenement was brought to a sale, in which Mr Boyes on his adjudication of Dr Scott's adjudication against Hugh Boyd was preferred; *primo loco*, and after him Bain; but Margaret Crawford got no preference from the Lord Ordinary, because the value of the eviction was not liquid, and she acquiesced; and having made over her right to Mr Boyes, his son insists to discuss the suspension against Ogilvie the cautioner. The Lords found, that Dr Scott's adjudication in 1699 accressed to Margaret Crawford as *jus superveniens auctori* for security of her purchase, notwithstanding that the Doctor had not been infeft on the adjudication, and that Mr Boyes had the first complete right, (as in the case of Blackethouse;) which does not apply to the case of *jus superveniens*; for the Doctor had been infeft in the property of that storey; and they found, that she having omitted to claim her preference on that medium to Mr Boyes, she could not now recur against the cautioner; *2dly*, They found that by her inhibition against Dr Scott, she was preferable to Mr Boyes's adjudication, and that she having made over her right of warrandice to Mr Boyes, and thereby deprived the cautioner of that subject of his relief, neither she nor Mr Boyes in her right could recur against him. The judgment is, sustain the reasons of suspension, and find no recourse competent against the cautioner. *Vide* Bell of Blackethouse's Case, *voce* COMPETITION

No. 7.

Effect of neglect
in the principal or
party lesed.