

- No. 3. Blackethouse, whereon he also was infest, but erroneously for the above reason. Thereafter Garthshore adjudged from Chatto, and particularly adjudged Oliphant's decret of sale and disposition to Chatto, and was duly infest by the superior upon the decret of sale and his adjudication. The Lords at first preferred Bell of Blackethouse, as having first denuded Chatto of his personal right; but upon a reclaiming bill and a hearing in presence, they preferred Garthshore, as having the first complete real right. *Vide* Thomas Boyes's Case, 10th January 1738, *voce* CAUTIONER. (See DICT. No. 80. p. 2848.)

1737. November 8.

CAPTAIN CHALMERS *against* Sir JAMES CUNNINGHAM.

No. 4.

THERE being many adjudications, and infestment upon one of them, and thereafter there being an infestment of annualrent upon an heritable bond granted before any of the adjudications, and then several other adjudications; there was no question that the adjudication with the infestment on it, before the infestment of annualrent, was preferable; but the question was as to adjudications within year and day of that first effectual one, and which are preferable *pari passu* with it, whether they are also preferable to the infestment of annualrent, whether they were led before or after it, or *e contra*? The Lords found the infestment of annualrent preferable to all adjudications, whether prior or posterior to it on which no infestment followed, notwithstanding they were within year and day of the said first effectual adjudication; and therefore adhered to the Lord Ordinary's interlocutor, that annualrent ought to be stated *in computo* of the real debts.

1738. January 10. CREDITORS of Mr. PATERSON, *Competing*.

No. 5.

Annualrenters, &c.

LORD PRESTONHALL, in 1710, disposed his estate to Lord Roystoun, under backbond for certain uses, with procuratory and precept. Lord Roystoun, in 1715, with consent of Fraserdale, sold the estate to Mr John Paterson, and disposed it, but without either procuratory or precept, only he assigned to him the procuratory and precept in Lord Prestonhall's disposition, but Mr Paterson never was infest. In 1716, Lord Roystoun, without his own knowledge, was infest on Lord Prestonhall's precept. In 1729 Mr Paterson granted several heritable securities, rights of annualrent, and assigned to them Lord Prestonhall's procuratory and precept, that had been

assigned to him by Lord Roystoun as above; and they were infest base upon the precept, not knowing that it had been already executed in Lord Roystoun's person in 1716; and Mr Paterson died bankrupt in terms of the act 1696, about 1732 or 1733. These annualrenters having discovered the defect of their infestments, they *anno* 1733 took a decret before the Sheriff of Edinburgh, against Lord Roystoun to infest them, founded on the obligation of style in his disposition to Mr Paterson, obliging him to infest him, and to which they had right; and in obedience Lord Roystoun granted them precepts of sasine whereon they were infest, and they adjudged likewise in implement of Lord Roystoun's disposition to Mr Paterson. Other two personal creditors adjudged from Mr Paterson's heir upon decreets *cognitionis causa*, viz. Bethune of Kilconquhar and Mrs Sinclair; but a third class not only adjudged from Mr Paterson's heir, whereby they carried the procuratory in Lord Prestonhall's disposition that had not been executed, but also exped a charter of resignation and adjudication upon that procuratory in the person of their trustee Kilconquhar, who was thereupon infest; and in the competition, the Lords found that the heritable bonds fell not under the act 1696. The reason was, that Mr Paterson the bankrupt's right remained still personal, and was effectually conveyed by his personal assignation, agreeably to the decision Colonel Charters against creditors of Blair decided I think about 1731.* *2do*, They found the infestments given by Lord Roystoun in 1733 not quarrellable on either the act 1621 or 1696. But then as to the superiority of Lord Roystoun's base infestment, to which the above three classes of creditors had the first complete right by their charter on the procuratory of resignation, the Lords preferred them upon that superiority, notwithstanding the former assignation of that procuratory by Mr Paterson to the creditors annualrenters, (agreeable to the decision in the case of Bell of Blackethouse, No. 3. *supra*.) *Vide* Creditors of Prestonhall, 22d December 1738, *voce* RANKING and SALE.

1741. *February* 24.

CREDITORS of EARL of BUCHAN *against* LORD CARDROSS.

No. 6.

AN assignation to mails and duties completed by intimation and possession preferred to a posterior adjudication, not completed by either infestment or charge against superiors.

* See Dict. No. 262. p. 1239.