

feftment null. *2dly*, They also found it reducible, as granted after an act for producing a progress in an adjudication at the pursuer's instance, but not because granted after raising inhibition, because in implement of a prior obligation. *3tio*, They found it null, as neither infesting in a particular annuity, nor in the lands for security of a certain sum, but indefinitely for L.100,000 sterling, or so much thereof as had been, or should be subscribed, (and what greatly moved me, though I believe not in the interlocutor) for payment of bonds not payable to particular subscribers, but going from hand to hand, like bank notes. *4to*, They adhered to their former interlocutor, finding that the certification did strike against these bonds (of which I greatly doubted.) *5to*, They found it void as to the L.27,000 subscribed for the Company. And *6to*, As to all bonds due to the stockholders.—*N. B.* Upon an appeal, the judgment was affirmed upon two or three of these reasons of reduction, I know not which, but as to the others (particularly the 4th) they found it unnecessary to determine, and therefore as to these reversed the interlocutors, without prejudice to any of the points when the same shall become necessary to be determined.—*Vide* Information for Duke of Norfolk, &c. against York-Buildings Company Annuitants, marked in November 1739, and 14th June 1739.

No. 22. 1739, July 25. CREDITORS of MR WILLIAM THOMSON.

THE Lords found, that Sir James Carmichael must take payment wholly out of the lands in Fife, and no part of it out of the houses in Edinburgh, in prejudice of Mr John Montgomery himself, notwithstanding of Mr John Montgomery's consent, which they thought could operate no benefit to the other creditors in Fife. The Lords laid great weight on the quality adjected to Mr John Montgomery's consent, that his debt should notwithstanding subsist only with a preference to Sir James Carmichael. I own I would have been of the same opinion without that clause. Arniston was at first against the interlocutor, but afterwards came into it, so that there was no vote. They also found that the creditors adjudgers should repay the first effectual adjudger his expenses of adjudication and infestment, with annualrent.

No. 23. 1740, Jan. 29. HOME *against* CREDITORS of EYEMOUTH.

THE Lords gave all the points in this cause unanimously against Sir John, and I marked and kept the papers singly, on account of the question, where a superiority is adjudged, and the adjudger infest, but not in possession, who is the proper superior after the legal for infesting the vassals? (a point I have stated in another place,) and the Lords were clear that the infestment by the old superior was good.

(See Note by the Editor, *voce* SUPERIOR and VASSAL.)

No. 24. 1740, Feb. 13. DICKSON of Killbucho *against* DOOLY.

KILLBUCHO having upon a general charge obtained a decret of constitution on a charge to enter heir, and upon a special charge adjudged an heritable bond, the question was, Whether this adjudication carried the annualrents *retro* from the predecessor's death? I thought not, because before 1672, the diligence behoved to have been by apprising, which could not reach bygoners. However, all the rest found that the adjudication carried these bygoners.