

moment, though bygone annualrents were not appraisable or adjudgeable, for he thought that subjects affectable by arrestment or confirmation might fall under inhibition; 3dly, He thought that bygone annualrents might be adjudged. But his opinion was founded on this, that personal rights did not fall under inhibition, and that bygone annualrents are but personal though secured upon the lands. But I confess his reasons would hardly have satisfied me, for a personal disposition of lands or adjudications are but personal rights, and yet would fall under inhibition. 2do, I cannot look on bygone annualrents secured by infestment as personal rights. He said, that if they were real, they must be now created; but in that I do not agree, for an infestment in a yearly annuity is an infestment for every year that should afterwards come due. 2dly, We found that an inhibition on letters of horning, that is bearing "because the Lords had seen the horning" was void and null; but this last superseded, because it was said, that the universal practice some years ago was otherwise.

WE determined the question mentioned 14th June 1750, whether it was a nullity in the inhibition, that it proceeded only on a horning? and the parties produced no less than 176 instances of such inhibitions since the 1692; and we unanimously repelled the objection—3d July 1751.

No. 12. 1750, June 22. MUIRHEAD *against* MAGISTRATES OF HADDINGTON.

THE Lords adhered to Strichen's interlocutor, finding no annualrent due on an agent's account, even of disbursements as old as 1731, and refused a reclaiming bill.

No. 13. 1751, June 11, 25. CREDITORS OF LANGTOUN *against* STEWART, &c.

A PREFERABLE debt of L.1000 sterling on this estate, with annualrent from 1690, being conveyed by Archibald Cockburn, younger of Langtoun, to the Society for Propagating Christian Knowledge, in 1723, in security of L.1000 sterling, then borrowed; and his father Sir Alexander, (who was served heir *cum beneficio*,) and he being debtors in relief to Houndwood in about L.700 sterling, they in 1730 joined in bond of relief to him, containing an assignation by Archibald to the annualrent before 1723, of the L.1000 conveyed to the Society, which they held in trust for him,—and this assignation Houndwood intimated to the Society. The Society in April 1732, on the narrative of that trust, made over this annualrent to Archibald, but saving a preference to themselves. 18th May 1732, Archibald Cockburn assigned these annualrents to Patrick Crawford in security of a debt of L.1341. Crawford thereafter attempted to poind Langtoun's crop and furniture; and being stopped by Stewart, Inglis, &c. the tacksmen, they were found liable for the debt and paid it, and got assignation in 1738, and in 1739 pursued poinding the ground. In the competition betwixt these two assignations, Stewart and the other tacksmen objected to Houndwood, that assignation and intimation were not habile to convey bygone annualrents of an heritable debt or right of annualrent, which could only be done by possession or poinding the ground; 2do, That though that were habile, and though Sir Alexander's signing the deed did supply intimation to him, that was not sufficient, because the right was not then in Archibald Cockburn, and *jus superveniens* does not hold in personal rights: and there was no intimation of Archibald's right in 1732 till their process of poinding

But as Archibald's right to the Society was only in security of a debt whereby the reversion remained with him, and all that was over that debt; we found Houndwood's right sufficiently completed, and therefore preferred him; and 25th June adhered, and refused a reclaiming bill without answers.

No. 14. 1754, Jan. 26. GRANT *against* LADY NEWMORE.

GRANT sued the Lady for a small account of saddle work furnished by him to her brother Colonel Monro of Newmore, to whom she was heir; and she obliged him to bring proof of the furnishing. On advising, we found the furnishings proved, and decerned for the account with annualrent from a year after the last article and expenses, in absence. *Vide infra* February 15.

No. 15. 1754, Feb. 15. MILLER *against* NEWLANDS.

NOTWITHSTANDING the judgment 26th January 1754, Grant *against* Lady Newmore, —in a process this day, for the price of merchant ware, L.54 value, not in way of retail, but in a slump bargain to be retailed; we refused to give annualrent for a year after the sale, and gave only from the citation in the process;—and thought even in retail annualrent was not always due from a year after furnishing; but that every case must be judged by its own circumstances.

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APPEAL.

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No. 1. 1734, Dec. 11. BLACKWOOD *against* RUSSELL, &c.

THE Lords found the creditors subscribing not found, in respect the other creditors who were preferable did not sign. My reason was, and was the opinion of the Lords, that the reversal of the judgment, if it had been obtained, would have been beneficial to the whole creditors not appealing as well as Mr Blackwood; and in case Mr Blackwood had prevailed, he could not have been bound in the terms of the contract to communicate his rights to the less preferable creditors signing, since the preferable creditors did not sign, and would be preferable to him.

No. 2. 1736, July 8. M'LEOD *against* GORDON.

ANKERVILLE and his creditors having entered an appeal against the decret given for Gartie against Cadboll, and a caption being raised against Cadboll at Robert Gordon the assignee's instance, after the appeal was served against him as well as against Gartie; Cadboll, though he was no appellent, presented a bill of suspension. The Lords would not pass the suspension, but they sisted execution of the caption (raised after the appeal) until the charger obtain the warrant of the Lords *in presentia* if in time of Session, or of three Lords if in time of vacance, for executing the same.—N. B. The Lords passed the bill as to some articles upon other grounds, and refused the rest.