

BASE INFESTMENT.

No 20.

property; which reply was not respected, but the first infestment preferred, albeit not clad with possession before the pursuer's confirmation, being not the less clad with possession at any time when the pursuer had no possession; and albeit the defender's infestment was not confirmed, yet it was preferred to the posterior infestment of the annualrent confirmed before the defender's possession; and the LORDS found, that the confirmation made not the pursuer's infestment public, seeing it was granted to be holden of the giver's self, and not of the superior.

Act. Hope.

Alt. Aiton & Nairn.

Clerk, Hay.

Fol. Dic. v. 1. 88. Durie, p. 314.

1628. January 30.

L. CLACKMANNAN against L. BALNAMOON.

No 21.
Found in
conformity
with No 20.
supra.

IN an action of poinding of the ground, at the L. Clackmannan's instance, against L. Balnamoon, an exception being proponed for Arbuthnot of Findoury, upon an infestment of an annualrent, out of the lands libelled, by virtue whereof, he was year and day in possession of the said annualrent, out of the lands contained in his infestment; whereby he *alleged*, That the lands could not be poinded at the pursuer's instance, for the pursuer's annualrent, but with reservation of this excipient's right. This exception was found relevant, notwithstanding of the reply, That the pursuer *alleged*, that his infestment was prior to the excipient's, by the space of an year, and both the said infestments being base, his priority behoved to give him preference: Likeas he alleged, that his right was not only prior, but was also in effect made public, by confirming of the same by the King's Majesty, and registration of his sasine thereof in the public registers; which confirmation, albeit the infestment was granted to be holden base of the giver, with the registration foresaid of the sasine, being insert in public registers, made the obscurity of his right to cease: Likeas he was in possession by receiving of a term's annualrent, from the giver of the infestment, before the excipient; all which was repelled, seeing he was not year and day in possession before the excipient's right and possession; likeas the LORDS found the said confirmation and registration, made it not public, the holding being base.

Act. Hope.

Alt. Gibson.

Clerk, Hay.

Fol. Dic. v. 1. p. 89. Durie, p. 335.