

Patrick Wood could lawfully dispoſe the appriſing to the Earl of Kincardine, or his authors, to ſubſiſt as a ſecurity for the ſums truly paid.

No 68.

Forbes, p. 318.

1724. February 26.

MR WALTER STIRLING, &c. *againſt* The ANNUALRENTERS upon the Eſtate of Ballagan.

No 69.

In a competi-
tion with an
infefment of
annualrent,
found that a
charge upon a
comprising
gave no pre-
ference.

IN the ranking of the creditors of Ballagan, a competition aroſe betwixt the annualrenters and adjudgers; whereof the caſe was, that the heritable bonds and writs in favours of the annualrenters, were prior to any ſtep of diligence upon the adjudications; but the infefments thereupon were poſterior to the adjudications and charge againſt the ſuperior; and the adjudgers were never infeft.

For the adjudgers it was *pleaded*, That by act 62, 1661, confirmed by conſtant cuſtom, an adjudication with a charge is equal to adjudication with infefment, which muſt prefer it to all poſterior infefments. And there is good ground it ſhould be ſo; for, if a charge againſt the ſuperior is the laſt ſtep the law directs to be taken during the legal, ſuperseding the neceſſity of infefment till after expiration thereof, the charge ought to be conſidered as an abſolute ſecurity during that time; otherwiſe every adjudger would be under a neceſſity of taking immediate infefment, to his own great inconvenience, and the utter ruin of the debtor.

It was *answered*, That theſe charges againſt the ſuperior tend only to regulate the competitions of adjudications one with another, but were never deſigned to give a preference in competition with voluntary rights; as was expreſſly found, Juſtice againſt Aikenhead, No 66. p. 2823. For an adjudication with a charge, is not ſo much as a real right to require a ſpecial ſervice; how can it then compete with an infefment?

THE LORDS found, That the heritable bonds and writs in favours of the annualrenters and infefters, being prior to the adjudications; the infefments on the rights of annualrent, though poſterior to the adjudication and charge thereon, are preferable to the ſaid adjudications.

It was likewiſe *pleaded* in favours of the annualrenters, That the charge againſt the ſuperior, at the adjudger's inſtance, was executed againſt an apparent heir not infeft, who could grant no infefment; and conſequently the charge was null. But the LORDS took it up upon the abſtract point, and determined accordingly.

Fol. Dic. v. 1. p. 182. Rem. Dec. No 48. p. 95.