

“ 5to, I take the reason why, in personal rights, the first intimation prefers, to be, because it makes the first complete right, and that infeftment in real rights is just what intimation is in personal rights.

“ As to the decisions, no argument from them for two reasons : *First*, Not to be followed if they have fatal consequences which cannot be prevented. This is not like the case, determining a disputed point, whereby one may regulate the pleas in time coming ; for the inconvenience cannot be avoided.

“ *Second*, So far as the decisions are in the case of adjudications, they do not meet, for an adjudication makes the subject litigious.

“ *Third*, As many decisions the other way ; at least, that back bonds granted by one having a personal right, do not affect his singular successor infefting before the competition, *Brockdolean* against *Margaret Ferguson* ; and the principle is the same.”

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1737. December 15. MR. ARCHIBALD DENHAM *against* ALEXANDER DENHAM.

“ FOUND that the simple contracting of personal debts, on which no diligence followed against the estate, does not infer an irritancy of the contractor's right.

“ This I note only as an instance that lawyers will argue any thing.

“ It does not appear that ever before this time it was pretended that the contracting of personal debts did infer an irritancy of the contractor's right to his estate : nothing could be more absurd ; but what gave rise to the act of Parliament was this, viz. it was much agitated among the old lawyers how far clauses irritant and resolute could, by law, bar an apprising, and its that the first instance of this point being determined was that of the taillie of Stormont in 1675. Notwithstanding of which decision, lawyers remained divided in their opinion : *ratio dubitandi*, an apprising, with infeftment, is a real right which cannot be prejudged by such clauses, which are merely personal. On the other hand, an apprising can only carry the debtor's right such as it is, and therefore as it is affected by these clauses ; and it was to settle this question that the act of Parliament, 1685, was made, which, agreeable to that decision in the case of the taillie of Stormont, statutes that it shall be lawful to his Majesty's subjects to tailzie their lands and estates, and to affect the said tailzies with irritant and resolute clauses, whereby it shall not be lawful to the heirs of tailzie to sell, &c. or contract debt, or to do any other deed whereby the samin may be apprized, &c. By the argument in this information, the not purging a debt contracted before the succession devolved, nay, the omission of it for an hour, should be an irritancy.

“ It surprised much to hear the President, notwithstanding of all this, declare himself against this interlocutor. But what shall one say ? *Bonus quandoque dormitat Homerus.*”