

1748. November 2.

DAME HELEN ERSKINE, Relict of SIR WILLIAM DOUGLAS of Kelhead, *against* WALLACE; and Others, arresting Creditors of SIR JOHN DOUGLAS.

Two troops of St George's dragoons being grazed during the Summer 1746 in the inclosures of Kelhead belonging to Sir John Douglas, several arrestments by Sir John's creditors were laid in the hands of the officers, in order to affect the grass-mail. The regiment being removed, the officers consigned the grass-mail, amounting to L. 180 Sterling, into the hands of Mr Fergusson of Craigdarroch the Sheriff-depute, to be made furthcoming to those having best right; and other arrestments having been used thereafter in Mr Fergusson's hand, he called the whole in a multiple-pounding.

In this process, compearance was made for said Lady Douglas, who produced her infestment for a yearly annuity of 2000 merks out of the lands of Kelhead, whereof the said inclosures were a part, and thereon pleaded to be preferred to the arresters.

Accordingly, THE LORDS found, 'her preferable upon her liferent-annuity to the arresters.'

Of old, annualrents had no effect but by pointing of the ground, *vide* Gray *contra* Graham, No 1. p. 565.; but now, since Guthrie *contra* the Earl of Galloway, No 4. p. 567., they have been found to be sufficient titles against all intrumitters with the rents personally. *Vid.* Stair, *tit. Infestments of Annualrent*, § 13. and the decision observed by Dirleton, 20th December 1676, Ker *contra* Hunter, No 6. p. 569.

*Kilkerran*, (ANNUALRENT, INFESTMENT OF.) No 1. p. 30.

1750. June 16. HORSBURGH of that ilk *against* HENRY DAVIDSON.

THOMAS CRANSTON of Birkhillside, being debtor to Horsburgh of that ilk by bond, was inhibit by him; after which he granted first an heritable bond to Henry Davidson tenant in Mowhaugh, who was infest; and then an heritable bond of corroboration, accumulating the interest due to Horsburgh, who was also infest; and adjudged upon it, without mentioning in his decret, his original bond.

Other creditors adjudged, and they were ranked on the debtor's estate, Henry Davidson *primo*, and Horsburgh *secundo loco*; and the other adjudgers fell without the price.

In making up the scheme of division, *pleaded* for Horsburgh, he must draw from Davidson, ranked before him on his infestment, upon a debt struck at by his inhibition, his debt, in so far as secured by the said inhibition.

*Pleaded* for Davidson, Horsburgh's heritable bond, on which he led his adjudication, is not secured by the inhibition; consequently he cannot, upon it,

No 102.

In a competition between arresters and an annual-renter; the annual-renter preferred upon her annual-rent-right, without doing diligence.

No 103.

A person inhibited granted an heritable bond to another creditor, and then an heritable bond of corroboration, accumulating interest, to the inhibitor, who adjudged thereon. The inhibitor was preferred on his first bond; after him the annual-renter; then the inhibitor for the accumulations in his bond of corroboration.

No 103.

draw any thing from Davidson, who is ranked before him : His adjudication on which he is ranked, and can only draw, does not proceed upon his original bond ; and if he should pretend that his bond is secured, on which he may adjudge, such adjudication could draw nothing, as being excluded by the other adjudgers, with whom it could not be brought in *pari passu* ; and consequently could be no ground of reduction *ex capite inhibitionis*, the debt contracted, *spretā inhibitione*, being of no prejudice to a security which could not draw. A debtor, by bond, being inhibited, and afterwards granting a bond of corroboration, on which the creditor adjudged, it was found the bond of corroboration, and adjudication upon it, could not be supported against the inhibition by the original bond, Fountainhall, v. 1. p. 706. 29th January 1696, Wilson and Logan Penman, *voce* INHIBITION.

*Replied*, If it were necessary for Horsburgh to adjudge again on his first bond, such adjudication would be effectual to reduce Davidson's bond on the inhibition ; for the other adjudications, which are themselves excluded by infestments, cannot be brought into consideration, to hinder him from drawing ; but, without this necessity, the inhibition secured the debt on which he was infest, and has adjudged.

*Duplied*, An inhibition does not secure a ground of debt, but the bond, decret or process on which it is led.

THE LORDS, 5th June, found that Henry Davidson could make no use of his infestment, to the prejudice of the bond on which the inhibition was led : and therefore that Horsburgh was preferable to, and behoved to draw back from Davidson the principal sum and interest contained in the bond on which the inhibition was led ; and appointed the scheme of division of the price to be made out accordingly : and this day refused a bill, and adhered with this explication, that Horsburgh behoved to be paid first the sums due upon his first bond ; that Davidson behoved to be paid after him upon his infestment ; and Horsburgh *tertio loco* on his bond of corroboration and infestment.

Reporter, *Monzie.* Act. *H. Home.* Alt. *Fergusson.* Clerk, *Forbes.*

*Fol. Dic. v. 3. p. 154. D. Falconer, v. 2. No 139. p. 163.*

No 104.

A disposition in security, and assignation to the rents of lands, followed by infestment, found preferable to an arrestment of these rents.

1780. July 13. DR ALEXANDER WEBSTER *against* HAY DONALDSON.

MR WALKER of Saintford granted to Dr Webster an heritable bond over his estate for L. 2000, containing an assignation to the mails and duties, on which the Doctor was infest, but did not enter into possession, nor intimate the assignation to the tenants.

Another creditor of Mr Walker's was Donaldson, to whom he owed L. 500 by a personal bond, and who used arrestments in the hands of his tenants.