

right in old Chatto, by the act of the superior, vested in Garthshore; so that he alone, and no other, was liable for all the casualties arising from the fee; consequently, he must, from thenceforth, be entitled to the rents and profits thereof. The parallel brought from assignations to personal rights tends to support the contrary to what it is adduced to prove; for, as it is acknowledged, that, notwithstanding of a first assignation, the radical right remains with the cedent, in so much that an after-assignation first intimated will be preferred; so the radical right of the fee remaining with old Chatto, the decret of sale and after-assignation, gave a power to the assignees to complete their real rights, and divest him; which being done, the radical right thereafter came to be vested in that party who completed the real right; as in assignations to personal rights, it is performed by the first intimation. Nor does the clause in the act referred to make any alteration in the present question; because it does not say, That the first latent bond of reversion, upon a personal right, must have preference to others, who having carried the same, have completed it, by establishing a real right thereupon; this being left to the disposition of the common law, as it stood before the act; and by that, Garthshore, as having the only complete real right in the subject, falls to be preferred to his competitor; who, suppose his titles were now lawfully made up, would have no manner of right in it at all.

THE LORDS preferred John Garthshore.

C. Home, No 59. p. 102.

* * * See No 85. p. 2860.

SECT. XIV.

Betwixt Rights flowing from different Authors.—Husband with Wife's Assignees.—Between Real and Personal Creditors, where the Debtor's Infertment Reduced.—Singular Successor of a Reverser, with the Heir of a Nominal Fiar.—Disponee in Security with a Personal Creditor.

1667. February 13. ANDREW SMEATON *against* TABBERT.

ANDREW SMEATON being infert in an annualrent out of a tenement in the Canongate, pursues a poinding of the ground, and produces his own infertment and his author's; but not the original infertment of the annualrent. It was *alleged* no process, until the original infertment were produced, constituting the annualrent, especially seeing the pursuit is for all bygones, since the date of the author's infertment; so that neither the pursuer, nor his immediate author have been in possession. *2dly*; If need be, it was offered to be proven, that before the rights produced, the authors were denuded. It was *answered*, That the

No 80.

No 81.

In a competition of rights flowing from different authors, the eldest was preferred, tho' *in petitorio*, the other being in possession.

No 81. pursuer hath produced sufficiently, and that his right was clad with possession, in the person of his mediate author, before the years in question. To the *second*, This pursuer hath the benefit of a possessory judgment by his infeftment, clad with possession, and is not obliged to dispute, whether his author were deputed or not, unless it were in a reduction.

THE LORDS sustained the pursuer's title, unless the defender produced a right anterior thereto; in which case, they ordained the parties to be heard thereupon, and so inclined not to exclude the pursuer, upon the allegiance of a possessory judgment; but that point came not fully to be debated: It is certain that a possessory judgment is not relevant in favours of a proprietor, against an annualrenter, to put him to reduce, because an annualrent is *debitum fundi*; but, whether an annualrenter possessing seven years, could exclude a proprietor, until he reduce, had not been decided, but in this case the LORDS inclined to the negative.

Fol. Dic. v. 1. p. 183. Stair, v. 1. p. 437.

No 82.

In a competition betwixt two base infeftments flowing from different authors, the Lords preferred that right which was in possession, tho' the right upon which the process was founded was of an older date, and refused to sustain the reduction without a progress from the King, or a common author, or prescription; for the defender argued, that he, being in possession, and producing any infeftment as a title, cannot be affected but by a prior complete right.

1674. June 16.

BROWN against INNERVEIK.

ROBERT BROWN pursues a reduction of the right of a two merk and a half merk land, being a portion of Blackburn, against John Innerveik: In which pursuit, the pursuer produces a base infeftment from John Duns, in favours of William Wallace, of the said whole portion; *Item*, An infeftment in favours of James Wallace, as oye to William, and the pursuer's infeftment from James. The defender produces an infeftment from Chirside of East-Nisbet to Innerveik, with a contract of division between Innerveik and John Wallace, son to William, bearing, 'That Chirside had given right to either of them of the equal halves of the said tenement, and that Innerveik had right from Duns, the pursuer's author;' he produces likewise a discharge from Duns to Chirside of the price of the said lands. Hereupon the pursuer repeated his reason of reduction, viz. 'That his right from Duns by progress began in anno 1575, and the defender's first right produced is but in anno 1603, from Chirside;' so that both being but base rights, and the pursuer's long prior, it is preferable. The defender *alleged*, That the reason so conceived was not relevant, for he being in possession, and producing any infeftment as a title, it cannot be taken away but by a prior valid right; and so the pursuer must libel and instruct that Duns his author had right immediately or mediately from the King, the first fountain of right; or that the defender derives his right from Duns, as common author to both, and so cannot quarrel Duns' right; or that the pursuer or his author since the act of prescription had possessed by virtue of their rights 40 years without interruption. It was *answered* for the pursuer, That where the defender could allege none of these titles himself, it was sufficient for the pursuer that his right was equally good, and more ancient. *2do*, He instructs Duns