

gage tenures, contain both charter and infestment, are exped in the manner followed in the present instance, whether the debtor's right was personal or otherwise.

Replied for Mrs Wight, A creditor, trusting to one in the personal right of a feudal estate, is, no doubt, in a worse situation than one whose debtor is infest. But that is an inconveniency to which he has exposed himself, and from which he can no more be relieved, on principles of equity, than a creditor of an apparent heir, who, without the formalities required by law, has attempted to attach an estate not vested in his debtor by service. The certificates produced have been obtained from persons who are ministerially employed in expediting charter of adjudication and resignation, but who have no access to know in what manner parties obtaining these charters have completed their rights. Far less can these certificates go the length of establishing, that an infestment, taken in the manner here adopted, would be sustained in a Court of law.

THE LORDS sustained the objection to the infestment, founded on by Marshall and Ruthven.

Reporter, *Lord Alva.* For Mrs Wight, *Ilay Campbell.*
For Marshall and Ruthven, *Rae, Mat. Ross.* Clerk, *Orme.*
Fol. Dic. v. 3. p. 318. Fac. Coll. No 41. p. 67.

G.

1796. February 26. LINDSAY-CARNEGIE against ROBERTSON-SCOTT.

AN infestment, taken upon an exhausted precept of sasine, is null.

Fac. Coll.

* * See this case, *voce* MEMBER OF PARLIAMENT.

SECT. VII.

Precept and Instrument of Sasine disconform to the Disposition.—
Charter disconform to its Warrant.

1750. June 19. Sir ARCHIBALD GRANT against GRANTS.

ROBERT GRANT of Tilliefour, by three heritable bonds, granted to several of his creditors, annualrents effeiring to their respective sums, commanding his

No 43.
A sasine was
sustained,
bearing one

No 41.

No 42.

No 43.
delivery of
the symbol to
a bailie, for
several di-
stinct annual-
rents.

bailie to give to A. sasine of such an annualrent, and to B. sasine of such an annualrent; and so of several, contained in the same bond; which was executed, as the sasine bore, by the bailie's giving to C. 'as procurator for, and in name and behalf of A. B. &c. heritable state and sasine, &c. of the said lands, with the pertinents, or of the foresaid yearly annualrents; or such annualrents as should by law correspond to the respective principal sums, &c. and that by deliverance to the said C. in name and behalf foresaid, of earth and stone of the ground of the said lands, and a penny money for the said annalrents.'

He afterwards granted an heritable bond to Mr William Grant, Advocate, for himself, and as trustee for his brother, Sir Archibald Grant of Monymusk, for two sums which he respectively owed them.

THE LORDS, as is observed, 10th November 1748, No 71. p. 949. 'Found the bonds of corroboration made and executed by Robert Grant of Tilliefour, to his creditors, were fraudulent, devised and made with intent to prefer them to Sir Archibald Grant and his Majesty's Advocate, anterior lawful creditors; and, therefore, reduced the said heritable bonds of corroboration, and the infestments following thereupon, *ad hunc effectum*, to subsist only, and come in to be ranked *pari passu* with Sir Archibald Grant and Lord Advocate's infestment.'

Objected, further, There is granted to each of the creditors a distinct and separate annualrent effeiring to his sum, and the bailie is commanded to give to each of them sasine thereof; which ought to have been done separately and distinctly; whereas, the symbols were once delivered to the procurator, for the whole.

Answered, The sasine is well granted, and according to practice, when separate interests are to be secured; as in rights to husband and wife, in conjunct fee, and to different persons, in fee and liferent; and, if executed otherwise, would not have answered the debtor's intention, which was to secure his creditors *pari passu*; whereas, the one to whom delivery was first made would have been preferred; and thus the objectors themselves are infest.

Replied, Persons partially interested in the same right, as fiars and liferenters, may be thus infest; and also one right may be given to a person for the use of several, which will bring them in *pari passu*, and this is the case of the pursuers; but the creditors have each a distinct and separate annualrent.

THE LORDS repelled the objection.

Reporter, *Sher Walton*.

Act. *A. Macdowal*.

Alt. *R. Craigie*.

Clerk, *Forbes*.

D. Falc. v. 2. No 140 p. 164.