

1755. *February 19.* WILLIAM DUFF *against* JOHN CHAPMAN.

THIS case is reported in *Fac. Coll. (Mor. 10046.)* Lord KILKERRAN has the following note of what passed on the bench:—

“*7th February, 1755.*—On moving this petition, the *President* said he had no doubt but that where one is infert upon an heritable bond, he is as much secured by his infertment for the penalty, to the extent of his necessary expenses, as he is for the principal and annualrent.

“The Ordinary answered that he was of the same opinion, but that there had been here no expense laid out in prosecution of the heritable bond on the lands of Alterlies, but upon a separate estate, which also was contained in the heritable bond belonging to another debtor, who was jointly bound in the bond; and on that ground he had pronounced his interlocutor.

“*Feb. 19, 1755.*—The Lords found the petitioner entitled to the penalty to the extent of the expenses laid out by him.

“In the infertment of annualrent in the old form, the principal sum and annualrents only, and expense of the infertment, were heritably secured, but in the heritable bond now in use, the creditor is secured by the infertment, no less for the penalty to the extent of his expenses.

“And of that principle the Ordinary had no doubt, but put his interlocutor on this specialty, that the expenses were not laid out in prosecuting the debt on the subject of this ranking.

“But the Lords did not take this circumstance as sufficient to avoid the demand of expense. It was an heritable bond granted by two persons who were jointly and severally bound in the personal obligation.”

1755. *March 5.* COPLAND and OTHERS *against* GEORGE and ALEX. FORBES.

GEORGE ELMSLIE, merchant in Aberdeen, was debtor to the defender, George Forbes, in L.94, 15s. 9d.; and having been incarcerated, 17th May, 1748, upon a caption raised by Forbes, he applied to the Magistrates of Aberdeen, 10th June, for an aliment under the act of grace. At the time of his imprisonment, Elmslie was also debtor to the pursuer Copland, and others, but the defender Forbes was the only creditor who had raised diligence.

16th June.—Of this date, Elmslie gave in an inventory of his whole effects, and at the same time, without any order to that effect, he also lodged with the clerk of Court a disposition of his whole effects in favour of George Forbes, the incarcerating creditor, *and of the pursuers*, or any two of them, for themselves, and as trustees for his other creditors, for payment of the several debts due to them.

Some time after Elmslie's imprisonment, but before his application for aliment, (7th June,) Forbes attempted to poind his effects; but the messenger being denied access to the house, the poinding was delayed until letters of open doors could be obtained. Elmslie, however, after consulting his friends, gave up the keys to the defender, who, of this date, *25th June*, (being *subsequent* to the disposition *omnium*