

assigned to him by Lord Roystoun as above; and they were infest base upon the precept, not knowing that it had been already executed in Lord Roystoun's person in 1716; and Mr Paterson died bankrupt in terms of the act 1696, about 1732 or 1733. These annualrenters having discovered the defect of their infestments, they *anno* 1733 took a decret before the Sheriff of Edinburgh, against Lord Roystoun to infest them, founded on the obligation of style in his disposition to Mr Paterson, obliging him to infest him, and to which they had right; and in obedience Lord Roystoun granted them precepts of sasine whereon they were infest, and they adjudged likewise in implement of Lord Roystoun's disposition to Mr Paterson. Other two personal creditors adjudged from Mr Paterson's heir upon decreets *cognitionis causa*, viz. Bethune of Kilconquhar and Mrs Sinclair; but a third class not only adjudged from Mr Paterson's heir, whereby they carried the procuratory in Lord Prestonhall's disposition that had not been executed, but also expedite a charter of resignation and adjudication upon that procuratory in the person of their trustee Kilconquhar, who was thereupon infest; and in the competition, the Lords found that the heritable bonds fell not under the act 1696. The reason was, that Mr Paterson the bankrupt's right remained still personal, and was effectually conveyed by his personal assignation, agreeably to the decision Colonel Charters against creditors of Blair decided I think about 1731.* *2do*, They found the infestments given by Lord Roystoun in 1733 not quarrellable on either the act 1621 or 1696. But then as to the superiority of Lord Roystoun's base infestment, to which the above three classes of creditors had the first complete right by their charter on the procuratory of resignation, the Lords preferred them upon that superiority, notwithstanding the former assignation of that procuratory by Mr Paterson to the creditors annualrenters, (agreeable to the decision in the case of Bell of Blackethouse, No. 3. *supra*.) *Vide* Creditors of Prestonhall, 22d December 1738, *voce* RANKING and SALE.

1741. *February* 24.

CREDITORS of EARL of BUCHAN *against* LORD CARDROSS.

No. 6.

AN assignation to mails and duties completed by intimation and possession preferred to a posterior adjudication, not completed by either infestment or charge against superiors.

* See Dict. No. 262. p. 1239.