

**\*\* N. B.** The Court had pronounced a similar judgment in the case of Stewart and others, Creditors of Sir John Douglas of Kelhead *contra* Douglas, in 1765, which is omitted in the reports of that year. See APPENDIX.

No 108.

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S E C T. VIII.

Effect of Irritancies, &c. not ingrossed in the Infertment.

1664. December 1. EARL OF SUTHERLAND *against* GORDON.

AN irritant clause, *ob non solutum canonem*, contained in the disposition of feu, but neither in the charter nor sasine following thereupon, is not real, nor effectual against an appriser. It is otherwise, if sasine follow directly upon the disposition, in which case the disposition serves for a charter.

*Fol. Dic. v. 2. p. 70.*

No 109.

**\*\*** This case is No 61. p. 7229. *voce* IRRITANCY.

1706. July 7.

SIR HUGH CAMPBELL of Calder *against* The CREDITORS of HAY of Park.

IN the ranking of the Creditors of Park Hay, Sir Hugh Campbell of Calder founded upon an heritable bond of relief for several cautionaries he stood engaged in for Park, whereupon he had taken the first infertment; and craved preference, not only for the principal sums, annualrents, and expenses paid by him to the common debtor's creditors, and these annualrents and debursements stated as a principal sum bearing annualrent from the time of payment; but also sought to be preferred for the expenses of expeding his infertment, and making it effectual against the other competing creditors; because, his bond of relief doth expressly provide that his infertment shall not be redeemable till he be reimbursed, not only of all charges and damages in general, but also of the expense of his infertment; and his charter under the Great Seal repeats these obligements, and both it and his sasine expressly relate to the reversion in the way and manner as the same is contained in the bond of relief registered and made publick.

*Answered* for the other Creditors, However the expense of Sir Hugh Campbell's infertment might be the foundation of an action against Park Hay, it is inconceivable upon what ground it can be real against the estate, to the exclu-

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An heritable bond of relief provided, that the infertment to be expeded on it should not be redeemable till the cautioner should be reimbursed of all charges and damages in general. He was found preferable only for sums, annualrents, and expenses paid by him to the creditors of the common debtor, not for the expenses of his infertment, or of supporting his right in the competition.