

or subsequent to the payment of the remittance, if posterior to the protest on Crichton's bill, could not have competed with it. No. 9.

The Court were of opinion, That the protest taken by M'Leod on the 8th May could not compete with that taken by Crichton on the 10th of May, as Seed's draught in favour of M'Leod was not directly upon the house of Sir William Forbes & Co. On the *second* point, they were of opinion, That Seed's draught, in favour of Crichton, on the Company, implied a conveyance of his bill on Rodgers in their hands. And it was said on the Bench, That *novum debiti* may be assigned in this way; that the Company could have been obliged to indorse the bill to Crichton after the protest taken by him, and were only to be considered as holding it for his behoof.

The judgment was,

“ Find, That Colin Crichton is, in virtue of his bill, drawn by the common debtor, on Sir William Forbes & Co. and protest thereof for not acceptance, preferable to the sums in the hands of the company.”

Lord Ordinary, *Ellick*. Act. *Sawinton*. Alt. *Ilay Campbell*. Clerk, *Menzies*.

Fac. Coll. No. 53. p. 94.

SECT. II.

Virtual Confirmation.

1663. *January 16.*

TENANTS of KILCHATTAN *against* LADY KILCHATTAN.

One having apprised an infestment which was null for want of confirmation, and being publicly infest upon his apprising, the charter of apprising, which passes of course, was not found equivalent to a confirmation of the original infestment.

Stair, Gilmour.

* * Stair's report of this case is No. 1. p. 1259. *voce* BASE INFESTMENT;
Gilmour's report is No. 4. p. 3008. *voce* CONFIRMATION.

1668. *December 9.* EARL of ARGYLE *against* GEORGE STIRLING.

The Earl of Argyle having pursued George Stirling to remove, he alleged, Absolvitor, because he stood infest on an apprising. It was replied, That the

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No. 11;
The donatar
of a forfeiture
was found

No. 11.
not to be excluded by an apprising granted by the Crown, the immediate superior, before the gift.

apprising and infestment could not defend him, because the person from whom he apprised being a vassal of the Earl of Argyle's, and his right not being confirmed by the King, the same could not exclude the pursuer, the King's donatar, and the appriser could be in no better case, because he being infest by the King before the pursuer's gift, when the King had both superiority and property, it is equivalent to him as if the King had confirmed his author's right. It was answered, That infestments upon apprisings that pass in course, and are not noticed in Exchequer, cannot prejudge the King, and take away the benefit of the gift, which must pass by a several signature.

Which the Lords found relevant, and repelled the defence and duply, and decerned.

Stair, v. 1. p. 568.

SECT. III.

Virtual Discharge.

No. 12.

1623. December 10. LA. ELPHINSTON *against* MR. JAMES ORD.

Found, That a decree-arbitral ordaining to discharge is equivalent to a discharge *etiam quod assignatum.*

Clerk, *Durie.*

Kerse MS. fol. 181.

No. 13.

1626. November 25. TURNBULL *against* SCOT.

A bond to discharge a reversion was found equivalent to a discharge in prejudice of a third party.

Durie. Kerse.

*** This case is No. 3. p. 13540. *voc.* REGISTRATION.

No. 14:
A bond was found discharged by

1632. December 6. CHISHOLM *against* GORDON.

One Chisholm, relict of umquhile Mr. Alexander Craig, and Douglas, her spouse, pursue Gordon of Park for payment of a sum of money contained in