

1691. December 9. FENTON against LOCKHART of CARNWATH.

No 22.

The time of the sealing, and not of the confirmation in the Exchequer, is to be considered; and therefore Mr Fenton, who had cited in a pointing of the ground upon the 1st of March, was brought in *pari passu* with Carnwath, who first was confirmed on the 28th February, and sealed the said 1st of March; and a probation by witnesses, that this citation was an hour prior to the sealing, was sustained to prefer him; and adhered to December 22. thereafter; and the priority of an hour being proven, he was simply preferred. See CONFIRMATION.

Fol. Dic. v. 1. p. 89. Harcarie, No 622. p. 172.

SECT. V.

Publication by Payment of Annualrent.

1626. July 18. WINRHAM against CRANSTON.*

In an action of pointing of the ground for an annualrent, at the instance of James Winrham in Edinburgh, against Cranston of Moniston, who defended himself with a public infestment of the said lands, out of which the pursuer's annualrent was granted, to be uplifted, and possession of the said lands, conform to the said heritable public right:—THE LORDS, nevertheless, sustained the pursuer's base saine of the annualrent, seeing he offered to prove in fortification thereof, that the granter of his said infestment had made payment to him of the said annualrent diverse years; which payment, so made by the annualziar, albeit not alleged to be paid out of the lands which were affected with the annualrent, nor yet alleged to be paid by the tenants and labourers of the ground, but only alleged to be personally paid by him, who granted the said infestment of annualrent; the LORDS sustained it, as a sufficient possession of the said annualrent, to authorise the foresaid right, in respect whereof, the same should be preferred to the said defender's public right foresaid; seeing thereby the LORDS found, That the said pursuer's right was clad with sufficient possession, (the same being proven, as said is,) and therefore could not be excluded by the said excipient's right.

No 23.
Found, that a base infestment is clothed with possession by payment of annualrent to the creditor, although not out of the lands affected, nor by the tenants, but personally by the granter.

Adv. Belsher.

Adv. Craig.

Clerk, Gibson.

Fol. Dic. v. 1. p. 89. Durie, p. 220.

* This case is, by mistake, in Fol. Dic. called Lady Glengarnock against L. Kilbirnie; a case on the same page of Durie, which will be found, *voce* POSSESSORY JUDGEMENT.