

1687. *February.*LADY WHITINGHAM *against* The TENANTS and CREDITORS thereof.

No 22.

Found in conformity with
No 20. p.
3487.

IN an action of pointing of the ground at the instance of the Lady Whitingham and Creditors, it being *alleged* for James Hamilton, one of the creditors, who likewise had an infestment of annualrent, but posterior to the Lady's infestment, That he was prejudged, in so far as she did suffer the common debtor to uplift the rents, and her annualrents running on did exhaust the rent when he came to point;—THE LORDS decerned in pointing of the ground at the Lady's instance, but declared that in time coming she should be holden to point the tenants upon the decreet, within 40 days after the term at which the rents are payable by the tenants; after which time it shall be liesom to James Hamilton to point the ground, butt prejudice to the Lady to point for the bygones of her rent.

Fol. Dic. v. 1. p. 238. Sir P. Home, MS. v. 2. No 897.

1712. *February 21.*THOMAS MONCRIEFF of that Ilk, *against* The Other CREDITORS of THOMAS CAMPBELL Flesher in Edinburgh.

No 23.

A creditor by an heritable bond and infestment, having obtained a decree of mails and duties against the tenants, preferring him to other competing creditors, was found accountable for the rents due by these tenants against whom he obtained the decree; but for his actual intromissions only, after their removal.

THOMAS CAMPBELL in anno 1698, granted to Sir Thomas Moncrieff an heritable bond and infestment in his lands of Towcross, in security of L. 6400 Scots, containing assignation to the mails and duties, but no power to set the lands, remove, out-put or in-put tenants; and Sir Thomas having, in a competition for mails and duties in the 1704, obtained a decreet before the Sheriffs of Edinburgh against the tenants, preferring him to Sir James Dick, and other creditors then competing, entered to the possession; but the common debtor, within a short space thereafter, removed the tenants who were decerned to pay Sir Thomas, and set the lands to others, from whom he uplifted the greatest part of the rents. Thomas Moncrieff, now of that Ilk, as deriving right from Sir Thomas, was, in a ranking of Thomas Campbell's creditors, found liable to count for the mails and duties of the lands due by those tenants against whom he obtained the decreet of preference; but found accountable only for his actual intromissions after removal of these tenant; because he had no power to set the lands, nor ready execution against the new intrants.

Fol. Dic. v. 1. p. 239. Forbes, p. 592.

The Title DILIGENCE is continued in Vol. IX.