

THE LORDS found, that Isabel, being conjunct fiar, had *jus exigendi*, and therefore might warrantably lead the comprising; which, being led by her and her second husband, did accresce to the heir of the first marriage, mentioned in the bond: And therefore, sustained the comprising against my Lord Pitfligo, albeit but a singular successor, likewise in the lands.*

No 10.

President Falconer, p. 56.

1691. July 8.

CREDITORS of LANGTON.

OLD Langton, having given a public infestment to his son, for relief of cautionry, not for the payment of creditors, without any enumeration of creditors; it was found, That the creditors have not the privilege and right of the infestment; so that young Langton might prefer some; or renounce the whole again to his father; or one creditor might prevent another by diligence; but young Langton being insolvent, could not grant voluntary rights, in prejudice of anterior diligence.

No 11.

Fol. Dic. v. 1. p. 2. Harcarfe, p. 171.

1696. January 24.

EARL of CASSILLIS against MONTGOMERY of Lainshaw.

PHESDO reported the competition betwixt the Earl of Cassillis, and James Montgomery of Lainshaw. The *first* point was, Having once produced his tack of the teinds in the process, he might not take it up again when he found the Earl, who had newly raised and cast in a reduction of the said tack, on this head, that it was set before a prior one had expired, was going to hold the production satisfied.—THE LORDS found a party might take up any writ, (not quarrelled as false,) before allegiances were proponed thereon, or litis-contestation made in the cause. The *next* point was; during Lainshaw's forfeiture, Strathallan, donator thereto, had obtained a decret of preference, on Lainshaw's tack of these teinds of Kirkmichell, before Cassillis's right; and Lainshaw, now founding on that decret, as *res judicata*, to exclude Cassillis; still he alleged Lainshaw had no right to the same, the forfeiture being *funditus*, rescinded, and all following thereon taken away.—*Answered*, That is only so far as the restored persons were lesed; but it

No 12.

Found that a person forfeited and restored, *per modum justitie*, might use any benefit the donator had obtained, during the forfeiture; such as a decret of preference, &c.

* The same case is noticed by Lord Fountainhall, vol. 1. p. 262, under date 18th January 1684, thus:—In a case between Forbes Lord Pitfligo, and Robert and Alexander Milns; The Lords, *in presentia*, find in an apprising, led by Mary Hillstains, my Lord Harcarfe's mother, on a bond wherein she was only conjunct fiar of the sum, and her daughter, Mary Hog, was by the bond, *per expressum*, fiar, but led by the liferentrix, for the principal sum, as if she had been fiar; That the said apprising was effectual, and accresced to the fiar, as if it had been also led and deduced at her instance, for her interest and right of fee; though her name was not in the comprising, but that the mother's security became her's, seeing she was conjunct fiar, and had power to uplift upon caution.—*Nota*, The Milns being paid off their debt, the benefit of this cause was for the behoof of Keith of Ludquhairn.