

- No. 8. the donatar's rights, as accords ; but recommended to the Ordinary, before whom the ranking was depending, to give them all convenient dispatch ; that he may have ready access to the rents, so far as his preferable right will carry him.

Fountainhall, v. 2. p. 369.

1711. December 27. JAMES HUNTER Supplicant.

No. 9.

JAMES HUNTER, collector of the cess for the shire of Ayr, gives in a petition, representing, That a competition having long depended betwixt the creditors of James Chalmers of Brockloch, and the factor dying, for these ten years bygone none have looked after the estate ; so it has lain waste, and he has been forced to pay its proportion of cess to the general receivers, though he has no access to the ground, it not being tenant-sted ; therefore craves that, for his reimbursement of bygones, and security of the cess in time coming, a new factor be named to set the lands at a roup to the greatest offerer. The bill being intimated, and none offering to answer it, they named the collector to be factor, on his finding sufficient caution, after his own payment of the cess, to make the surplus forthcoming to all parties that shall be found to have best right. It was remembered the Lords had done the like in the lands of Quhap, the heritor being out of the kingdom, and none meddling, and the cess running on unpaid. These warrants are a part of the Lords' *officium nobile* ; but necessity justifies them, that such cases, in human accidents, must have a remeid.

Fol. Dic. v. p. 366. Fountainhall, v. 2. p. 695.

1714. January 27.

JANET MAXWELL, LADY COWHILL, and her HUSBAND, for his Interest,
against JOHN SHARP of Hoddam.

No. 10.

IN the count and reckoning, at the instance of the Laird and Lady Cowhill, for the rents of the Lady's estate during the time that John M'Naught, writer in Dumfries, was factor, against Sharp of Hoddam, cautioner for M'Naught, the Lords found, that creditors upon the estate, who, at the commencement of the factory, were in possession thereof by proper wadsets or tacks, are presumed to have continued in the possession during the time of the factory ; but that such creditors as had improper wadsets, or only infectments of annual rent, with an assignation to mails and duties *in gremio* till they were paid, having possessed the lands, or uplifted the rents before the factory, are not presumed to have continued to possess, but their introductions with the rents behoved to be proved in order to exonerate the defender from counting for the same.

Fol. Dic. v. 2. p. 365. Forbes, MS. p. 17.