

COMPETITION.

1733. *February 14.*

M'GILL of Rankeillor *against* REAL CREDITORS of HAY of Naughton.

No. 1.

COMPETITION betwixt arrestments and infestment of annualrent, though such infestments will not exclude *bona fide* payments made by tenants to the heritor, when the annualrenters have done no diligence to interpel them, yet while the rents are in the tenants' hands, the infestments without diligence are preferable to all assignees conventional or legal by arrestment. *Vide* 28th November 1748, Creditors of Sir John Douglas, *voce* ANNUALRENT.

1736. *December 1.* CREDITORS of SIR JAMES DUNBAR.

No. 2.

THOUGH a disposition directly to creditors or to trustees for their behoof may prefer the creditors *pari passu* without respect to after diligence, yet a disposition to one with the burden of debts, or for payment of debts, has not that effect, but they are preferable according to their diligence.

1737. *July 15.* BELL of Blackethouse *against* JOHN GARTHSHORE.

No. 3.

THE first complete real right is preferred to a prior personal conveyance of a personal right. Oliphant purchased a house at a judicial roup, and without being infest sold it to one Chatto, who was erroneously infest on Oliphant's disposition. Chatto gave an heritable security in it to Bell of

- No. 3. Blackethouse, whereon he also was infest, but erroneously for the above reason. Thereafter Garthshore adjudged from Chatto, and particularly adjudged Oliphant's decret of sale and disposition to Chatto, and was duly infest by the superior upon the decret of sale and his adjudication. The Lords at first preferred Bell of Blackethouse, as having first denuded Chatto of his personal right; but upon a reclaiming bill and a hearing in presence, they preferred Garthshore, as having the first complete real right. *Vide* Thomas Boyes's Case, 10th January 1738, *voce* CAUTIONER. (See DICT. No. 80. p. 2848.)

1737. November 8.

CAPTAIN CHALMERS *against* Sir JAMES CUNNINGHAM.

No. 4.

THERE being many adjudications, and infestment upon one of them, and thereafter there being an infestment of annualrent upon an heritable bond granted before any of the adjudications, and then several other adjudications; there was no question that the adjudication with the infestment on it, before the infestment of annualrent, was preferable; but the question was as to adjudications within year and day of that first effectual one, and which are preferable *pari passu* with it, whether they are also preferable to the infestment of annualrent, whether they were led before or after it, or *e contra*? The Lords found the infestment of annualrent preferable to all adjudications, whether prior or posterior to it on which no infestment followed, notwithstanding they were within year and day of the said first effectual adjudication; and therefore adhered to the Lord Ordinary's interlocutor, that annualrent ought to be stated *in computo* of the real debts.

1738. January 10. CREDITORS of Mr. PATERSON, *Competing*.

No. 5.

Annualrenters, &c.

LORD PRESTONHALL, in 1710, disposed his estate to Lord Roystoun, under backbond for certain uses, with procuratory and precept. Lord Roystoun, in 1715, with consent of Fraserdale, sold the estate to Mr John Paterson, and disposed it, but without either procuratory or precept, only he assigned to him the procuratory and precept in Lord Prestonhall's disposition, but Mr Paterson never was infest. In 1716, Lord Roystoun, without his own knowledge, was infest on Lord Prestonhall's precept. In 1729 Mr Paterson granted several heritable securities, rights of annualrent, and assigned to them Lord Prestonhall's procuratory and precept, that had been