

1678. November 6. MILN against HAY.

A CREDITOR being preferable over two tenements, and a secondary creditor having right only over one of them, in that situation, the preferable creditor for a separate debt, adjudged both tenements. It was FOUND, that the catholic creditor was not obliged to dispoise to the secondary creditor in prejudice of his adjudication, existing before the date of the process.

*Fol. Dic. v. 1. p. 222.*

\* \* \* See this case, *voce* BASE INFESTMENT, No 62. p. 1341.

1693. February 1.

The LADY GUNSGREEN against HELEN LAUDER, and MR JAMES LAUDER, Provost of Haddington, her Husband.

THE LORDS would not force the Lady, in this case, to assign upon payment, having sundry rights in her person, unless all were satisfied; and thought it not sufficient to declare, in the assignation, that it should not prejudice the other rights; but they found, that the Lady having two subjects out of which she could lift her annualrent, in the one of which Helen Lauder was infest, and in the other not; though *regulariter* the liferentrix could not be restricted to one of the lands more than to the other, yet the LORDS declared they would ordain her to assign her right on payment; or else to distress and do diligence first against that land wherein Helen Lauder had no right; with this quality, that what after diligence, she could not recover out of that land, she might recue *pro tanto* against the other; and where there is a concurrence of creditors, the LORDS use to allow the first annualrenter to poind within 20 days of the term, and the second not to have access till that space be expired.

*Fol. Dic. v. 1. p. 222. Fountainball, v. 1. p. 552.*

1696. January 3. SCOTLAND against BAIRDNER.

PHILIPHAUGH reported Mr William Scotland, the chancellor's chaplain, against Thomas Bairdner of Cultmilne. The pursuer, as assignee by a liferentrix, convenes this defender for his possession of the liferented lands; who *alleges*, he has right to two infestments of annualrent, which being preferable to the widow, exhaust the subject. *Objected*, These annualrents were universal over the whole; whereas the widow's liferent was only out of a half; and the other being sufficient to pay it, they ought to restrict thereto, at least to assign

No 20.

No 21.

A liferentrix, by annuity, was infest in two separate subjects, one of which was also affected by a second infestment. The Lords declared they would ordain her either to assign her right on payment, or to do diligence first against that subject, in which the secondary creditor had no interest.

No 22.

A person had an infestment affecting a whole subject. A liferentrix had an infestment affecting the half, but posterior. The