

No 6. such a disposition by the heir to one of his own creditors, is quarrellable by another of his creditors.

Fol. Dic. v. 1. p. 206. Harcarse, (PRESCRIPTION.) No 773. p. 219.

* * See The case of Ker against Scot, *voce* ARRESTMENT, No 22. p. 690. ; and *voce* COMPETENT, No 34. p. 2715., in which the principle of the above decision was recognized.

1711. February 9.

MR JAMES GRAHAM Advocate, *against* CAPTAINS JOHN M'QUEEN and WILLIAM DRUMMOND.

No 7.
Under apparent heirs, in act 24th Parl. 1661, are comprehended *nominatim* substitutes in bonds or other rights; so that the creditors of the institute are preferable to the creditors of the substitutes.

In a competition betwixt Mr James Graham, as decerned executor *qua* creditor to Mrs Alison Fletcher, relict of John Graham, general post-master, and Captains M'Queen and Drummod, executors-creditors to Captain David Graham, for the sum of 1000 merks, which the Earl of Strathmore and his cautioner were obliged by bond 'to pay to Mrs Alison Fletcher, and failing of her by 'decease, to the said Captain David Graham, or to Mrs Alison's assignees what-soever;'—THE LORDS preferred Mr James Graham to Captains M'Queen and Drummond, executors-creditors to Captain David Graham the substitute; and decerned the Earl and his cautioner to make payment to Mr James, he confirming before extract; reserving to Captains M'Queen and Drummond action of recourse against the representatives of Alison Fletcher, the institute and fiar of the bond, as accords; in respect the predecessor's creditors doing diligence within three years, are preferable to the creditors of the apparent heir, act 24th Parl. 1. sess. 1. C. II. whether in a real or moveable estate, under which heirs substitute are comprehended; for albeit substitutes *nominatim* are preferable to the heirs or executors of the institute, 18th January 1625, Wat *contra* Dobie*; 15th January 1630, Thomson *contra* Merkland†; such substitutes may be excluded by the institutes' creditors; seeing substitution or succession takes only place, after payment of the debt of the institute, who was fiar and proprietor, as in this case.

Fol. Dic. v. 1. p. 205. Forbes, p. 494.

No 8.

Creditors of a defunct are preferred before those of his heir. The heir cannot dispoise the estate in prejudice of his

1747. November 26. WILLIAM TAYLOR *against* LORD BRACO.

ARCHIBALD GEDDES of Essel having died 29th August 1697, Andrew his son and heir apparenr sold the estate to Duff of Dipple, 26th of April 1698. The father and son had joined in a bond of borrowed money to John Taylor, for the sum of L. 800 Scots; and this claim lay over many years, but was saved from prescription by the minority of the creditor's representatives. William

* *Voce* SUBSTITUTE and CONDITIONAL INSTITUTE.

† *Voce* HUSBAND and WIFE.