

Which the LORDS sustained, for otherways the donatar needed never be infest, and so the King would loose his casualty of the superiority.

No 23.

Fol. Dic. v. 1. p. 522. Stair, v. 2. p. 682.

* * * Fountainhall reports this case :

THE LORDS sustained the pursuit at the instance of the donatar to the Laird of Carsland's forefaulture, and his assignee, upon his presentation without infestment, for the bygone feu-duties, except those that were *bona fide percepti*, albeit the donatar be not infest, in respect of the King's Advocate's concurrence; and repels the allegiance of the possessory judgment against the donatar.

Fountainhall, MS.

1724. *January.*

COMMISSIONERS of EXCISE *against* The CREDITORS of the EARL of NORTHESK.

IN a competition between the Commissioners of Excise, on behalf of the Crown, and some of the personal creditors of the Earl of Northesk, about certain bygone rents in the tenants hands, the Commissioners *insisted* for preference, because they commenced their suit before any of the other creditors obtained decree, according to statute 33d, Henry VIII. cap. 39. § 25, by which it is provided, ' That the King shall have first execution for any debt due to the Crown, against any defendant, before any other person; so always that the King's suit be taken and commenced, or process awarded for the said debt, before judgment given for the said other persons.' THE LORDS preferred the Commissioners. See APPENDIX.

No 24.

Fol. Dic. v. 1. p. 524.

1754. *July 7.*

CREDITORS of JOHN BURNET *against* JAMES MURRAY, Receiver General of the Customs.

JAMES MURRAY, Receiver General of the Customs, led an adjudication of the real estate belonging to John Burnet merchant in Aberdeen, for a debt due by him to the Crown upon duties of tobacco. Burnet's other creditors led adjudications within year and day; and *insisted*, in the ranking, for a *pari passu* preference, upon the act 1661, Charles II. parl. 1. cap. 62.

Argued for the Crown; That by the law of England, whether the common law or the statutes, the Crown, before judgment obtained, was preferable in a competition with other creditors, upon the real as well as personal estates of its

No 25.

The Crown ranked *pari passu* with other adjudging creditors, in a ranking and sale of a bankrupt's estate.