

But in the clause of warrandice, it stood thus, " which right, I bind and oblige me to warrant from my own proper fact and deed, with the burden of my debts;" and in the precept of sasine, " under the reservation of my own liferent, and with the burden of my just and lawful debts." The father's debts were here found a real burden upon the subject disposed; and good against singular successors, though it was argued to be most express in the dispositive clause and procuratory, that this was a personal burden only upon the acceptor, and that the subsequent clauses must be understood of the burden, as described at large in the foregoing principal clauses of the writ; a personal burden being as truly a burden in its nature as a real burden. See APPENDIX.

*Fol. Dic. v. 2. p. 67.*

No 64.

1730, July —. CREDITORS OF CALDERWOOD Competing.

CLAUSES burdening the subject disposed with the granter's debts in general, without mention of any particular debt, whether these debts become thereby real, debated, but not determined.

But thereafter it having been found in an appeal to the House of Peers, that such general clauses create no real burden; the LORDS ever since have been in use to determine according to the judgment of the higher Court. See APPENDIX.

*Fol. Dic. v. 2. p. 67.*

No 65.

1731. February 12. BARCLAY against GEMMIL.

A FATHER disposed his estate to his son, with the burden of 5000 merks to his creditors, " conform to bonds granted to them." After he was denuded, he contracted several debts, for which he granted infestments of annualrents, upon the lands formerly disposed to his son. In a competition betwixt a personal creditor for 1000 merks, prior to the disposition, and these annualrenters; it was *pleaded, 1mo*, That, by the son's infestment, the father was denuded, and had it not in his power to lay any new burden upon the estate, over and above what he had laid upon it in favours of his creditors, existing at the time of the disposition; and if the debts did not amount to 5000 merks, it was so much gain to the son. *2do*, Supposing this clause could be understood as a faculty, empowering the father to grant new securities upon the estate, so far as the 5000 merks was not exhausted by prior debts, still the debts, such as were existing before the disposition, were made real burdens upon the estate, equally as if they had been specially mentioned in the infestment, which must prefer them to all posterior debts, though made real upon the estate by infestment.

No 66.

No 66.

It was found, that no debts posterior to the disposition, could come in competition with the debts prior to the same. See APPENDIX.

*Fol. Dic. v. 2. p. 68.*

No 67.

1734. July 5. VISCOUNT OF OXFORD *against* OFFICERS OF STATE.

AN act of the fifth of King George I. entitled, An a act for enlarging the time to determine claims on the forfeited estates; provides, ' That superiors shall be obliged to pay a proportional share of the true and lawful debts of the attainted persons, answerable to such estate, as shall be found to belong to them by virtue of the clan act.' Upon this clause, a competition arose betwixt the superior's personal creditors, affecting the rents by virtue of arrestments, and the personal creditors of the forfeiting person, whose estate it had been; in which competition, the creditors of the forfeiting person were found preferable, the estate being supposed to devolve to the superior, with the burden of the forfeiting person's debts, though not so expressed in the clause. See APPENDIX.

*Fol. Dic. v. 2. p. 67.*

1738. January 10.

CREDITORS of SMITH *against* His BROTHERS and SISTERS.

No 68.

In a disposition of a land estate, by the proprietor to his eldest son, there was inserted the following clause; " as also these presents are granted, with the express burden of the payment of 8000 merks, which the said James my son, by acceptation hereof, binds and obliges him to content and pay to John, Gilbert, &c. my younger children, equally amongst them." In a competition betwixt the younger children, and the creditors of the eldest son, the question was, whether it was a personal burden only, or both a personal and real burden. The creditors *pleaded*, That there is a personal burden plainly established, and the clause does not necessarily import any thing further; and therefore, to found upon the same clause, as also inferring a real burden, which is a right of a quite separate nature, is truly establishing rights and conveyances, by conjecture and implication, contrary to the principles of law and of reason. THE LORDS, notwithstanding, found the above clause in the disposition made the provision real. See APPENDIX.

*Fol. Dic. v. 2. p. 67.*