

No. 9. 1742, Dec. 9. CREDITORS of PATERSON *against* M'AULAY.

M'AULAY, after being decerned in a sum of damages to Paterson for oppression and wrongous imprisonment, bought in some bills due by him. Paterson's creditors arrested, and M'Aulay pleads compensation, which Royston, Ordinary, sustained. But on a reclaiming bill, the lawyer for M'Aulay seemed to give up compensation, but pleaded retention, because Paterson is bankrupt. The Lords found there could be no compensation sustained after the decret, but remitted to the Ordinary to bear them on the retention.

---

COMPETITION.

---

No. 2. 1736, Dec. 1. CREDITORS of SIR JAMES DUNBAR.

THE Lords altered the Lord Ordinary's (Newhall) interlocutor, and found these creditors preferable according to their diligence, and not *pari passu*, as he had found;—and they were unanimous except the Ordinary, (the President absent.) Some thought the defunct could not by any deed however explicit prefer his creditors *pari passu*, and defraud them of the effect of their diligence to be raised; but there was some difficulty, because the creditors could not subsume in terms of either the act 1621 or 1696. But that which determined the whole was, that the disposition was not to the creditors, or to their behoof, but to Oliphant, with the burden of debts, which made him personally liable, though only *in valorem*,—but gave the creditors no right to the subjects disposed; and Oliphant behaved to pay the creditors according to their diligence, as in the known case of executors, and the case of heirs *cum beneficio*, as was decided in 1724, Mrs Scott against Sir Alexander Burnet of Leys; and as in the decision mentioned in the papers 17th December 1675, Creditors of Masterton against Creditors of Alice Thin, with respect to Alice Thin's own proper effects.—(DICT. No. 9. p. 11,830.)

No. 3. 1737, July 15. BELL of Blackwoodhouse *against* GARTHSHORE.

THE Lords preferred William Bell, whose right they found carried the personal right that was in the common author.—2d July 1736.

This case, which was first determined in July last, was also of that importance, that the Lords, after hearing it in their own presence, and getting informations, delayed it till this day, (21st June 1737,) when they altered their former interlocutor preferring Blackwoodhouse, as having first denuded young Chatto, who had but a personal right, and preferring Garthshore as having the first real right, *me et quibusdam aliis renitentibus*. Arniston owned that he had several times changed his opinion on this question even during the dependence of this process, but now he was of the opinion of the last interlocutor, and we both thought that notwithstanding that opinion, if one having a personal right should assign it, and thereafter be infest, and then grant a second disposition,

and infest that second disponee, he would be preferred to the first; but he said that if that second disponee should first acquire his disposition, and then infest his author, the first disposition would be preferred; but I doubted of this last, because infesting the author vested the property in him, whereof he could not be denuded by the personal disposition; but in this case the author's infestment would have accresced to Blackwoodhouse, since both he and Chatto were infest, but erroneously.—15th July 1737, The Lords adhered as to the general point, but remitted to the Ordinary to hear parties on the specialties, particularly that Garthshore obtained his charter *pendente processu*; 2dly, that it was not a charter of sale, but of adjudication.

No. 4. 1737, Nov. 8. CAPTAIN CHALMERS *against* SIR J. CUNNINGHAM.

See Note of No. 14. *voce* ADJUDICATION.

No. 5. 1738, Jan. 10. CREDITORS of Mr PATERSON, *Competing*.

ON report of Lord Newhall without naming parties, Whether on the statute 1696 anent notour bankrupts, the executing a caption and taking a bond of presentation was imprisonment to bring him within the description of the act? the Lords were divided, but on the vote found it was in law imprisonment.—N. B. I find Mr Paterson Prestonhall was the bankrupt.—9th July 1736.

The Lords, notwithstanding of the above decision in the case of Blackwoodhouse, adhered to the Ordinary's interlocutor, finding that Sir William Baird's heritable bond fell not under the act 1696, because Mr Paterson's right was only personal, and was effectually conveyed by the heritable bond and assignation without infestment, as they found in the case of Colonel Charteris and Creditors of Blair,—for here was no complete real right competing with them; and they found that the infestments given by Lord Royston in 1733 were not quarrellable in the acts 1621 or 1696, and these infestments would have preferred them to any subsequent infestment these other creditors could have got, as they got none.—21st June 1737.—*Vide* 22d July.

Adhered to the former interlocutor of the 21st June last, in so far as concerned the property held of Lord Royston, but found the petitioners preferable upon the superiority that was in Lord Prestonhall's person, which is agreeable to our last judgment in the case of Blackwoodhouse.—22d July 1737.—*Vide* 10th January 1738.

This case was decided 22d July 1737; and upon the reclaiming bill the question was concerning the superiority, in which Kilconquhar was infest, Whether it is only a nominal right, that might be absorbed at pleasure by the annualrenters, or if it was what the petitioners called patrimonial? The Lords adhered to the former interlocutor, but found all the adjudgers within year and day preferable *pari passu*. (See Note of No. 9. *voce* RANKING AND SALE.)

No. 6. 1741, Feb. 24. CREDITORS of EARL of BUCHAN *against* LORD CARDROSS.

LORD CARDROSS having an assignation to mails and duties completed by intimation and possession before any adjudication of these lands,—the Lords preferred Lord Cardross to the adjudgers, their adjudications not being completed by infestment.