

1747. *January 24.* CREDITORS of WHITEHAUGH, *Competing.*

No. 8.

THERE being an inhibition and three infestments of annualrent all posterior to it, and then an adjudication on the inhibition; the question was, whether the annualrents should be first preferred and ranked in their order, and then the inhibitor to draw proportionally from each of them, which has been the general practice for 50 years? or, if the inhibition must be ranked first, and next the annualrenters in their order, so as all the deficiency shall fall on the last annualrenter. By the President's casting vote this last carried, after long pleadings at the bar and reasoning on the bench Adhered to. John Lithgow was the first annualrenter. *Vide M'Gill, No. 1. supra. Vide Hope's Creditors, 2d February 1750, voce INHIBITION. (See DICT. No. 101. p. 2896.)*

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1749. *November 24.* CREDITORS of CHARLES GRAY.

No. 9.

COMPETITION of arresters,—the arrester preferred his debt being a bill accepted by two persons, viz. the common debtor and another; the creditor postponed, insisted that the said bill should be assigned to him against the co-obligant. Answered, He could not in equity assign, because that other person was truly only cautioner for the common debtor. Of this there was no written evidence; but as the foundation of the debt was a bargain of victual, a proof before answer was allowed by witnesses, and a pretty convincing proof was brought; and therefore, though we doubted whether it was competent to prove by witnesses that one of two acceptors of a bill is only cautioner, yet as this claim to have the bill assigned was only a claim in equity, we found the creditor preferred not bound to assign.

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1750. *June 13.* COMPETITION DEMPSTER and LADY KINLOCH.

No. 10.

IN Dempster's case, mentioned *voce* FORFEITURE, Dempster being preferable on his heritable bond to Lady Kinloch, because his sasine was first registrated, the Lady objected that he could not be preferred for the whole L.20,000, but only the L.8735, the sum then advanced, and that he was not at all creditor, far less a real creditor, for the remainder till December