

to oblige them to assign,—and I quoted the case 24th February 1708, Kennedy against Vans. (Dict. No. 24. p. 3370.) However, Miller may, as creditor to Charles Gray, yet confirm his right of relief.

No. 10. 1750, June 13. COMPETITION, DEMPSTER and LADY KINLOCH.

SEE Note of No. 13, *voce* FORFEITURE.

No. 11. 1751, Jan. 23, June 12, 13. CREDITORS of FULLERTON, *Competing*.

CAPTAIN HUGH FULLERTON in 1723 granted heritable bond for 8000 merks on some tenements and burgh-lands to Mr James Murray, whereon he was infeft April 1724, and in 1726 the Captain disposed the tenement and burgh-lands for love and favour to his second son, Samuel, with absolute warrandice. 22d December 1730 Murray executed inhibition, and 18th February 1732 adjudged his debtor's whole estate. After the inhibition, the Captain sold the lands of Ackerley to Thomas Bain;—and he, on distress on the inhibition, paid Murray, and got assignation. 5th January 1742, after his death, his son John succeeded;—and his creditors adjudged both estates, and were all within year and day of the first effectual one, dated 7th June 1743, and pursued a sale of both estates, which is now carried on by Bain in right of Murray's debt. Samuel's creditors, who were infeft in the tenements and burgh-lands for sums near the value, insisted that they ought to be preferred, for that the Captain being bound to warrant Samuel's right against Bain's debt, Bain was obliged upon payment, or if he drew his payment out of their debtor's estate, to convey his infeftment and diligence to them, which was preferable to the whole of the other creditors. On the other hand, the creditors of John insisted that he ought to assign to them. But the Court, 23d January last, found that he was not obliged to assign to the creditors of John,—but that if he was ranked on the estate of Samuel, he was bound to assign to his creditors. And yesterday, on petition and answers, they adhered, *quibusdam renit*. My only difficulty was, that had it not been for the warrandice in Samuel's disposition, he or his creditors would not have been entitled to relief of that debt; and though on any question with the Captain that clause would well have entitled Samuel to relief and to an assignation on payment,—yet I thought it hard, that in competition of real creditors, that personal latent obligation that entered no record, should have as strong an effect in favour of Samuel and his creditors, against the creditors of the Captain or his heirs, as if Samuel had had an infeftment of relief, or as if Murray's diligence for his debt had been used by Samuel upon his warrandice.

No. 12. 1752, Feb. 14, June 26. YORK-BUILDINGS COMPANY *against* The DUKE of NORFOLK.

IN 1727, certain trustees were infeft in the York-Buildings Company's estates in Scotland, for security of certain annuities for lives, and the bonds granted for them all contained in a schedule annexed to the disposition, which schedule mentioned the annuitants' names, and sums payable to them severally, but not the names of the nominees during whose lives the annuities were payable, whereof some were persons different from the annuitants who had right to them,—the annuitant choosing whomsoever he pleased. In 1730 the Duke of Norfolk became creditor to the Company by a lease he gave them of