

S E C T. III.

Privilege as Creditor.

1529. December 9.

Mr ARCHIBALD MONCRIEFF *against* LADY BALNAGOWN and M'INTOSH.

No 21.

FOUND, that a comprising for the King's blench duty ought to be preferred to all infestments anterior, by dispositions or comprising.

Kerse, MS. fol. 30.

1620. December 6. Sir HENRY WARDLAW *against* WILLIAM DICK.

FOUND, that poinding, without decret, cannot be for the King's duties, except for the same year.

No 22.

Kerse, MS. fol. 30.

1679. January 28. The LAIRD of BLAIR *against* The LADY HASLEHEAD.

THERE being a double poinding raised at the instance of the Tenants of Over-town against the Lady Haslehead and the Laird of Blair, both compeared and produced their interests; viz. the Lady's interest is her infestment upon her contract of marriage; and Blair's interest is a gift from the King, presenting Blair in place of Carsland who was forefault, who held the said lands of Haslehead, together with a retour of the quinquennial possession of the rebel, bearing, that Carsland was in possession of Over-town, as heritable possessor by a security granted by Haslehead, redeemable upon payment of 13,000 merks; and thereupon *alleged*, That he ought to be preferred to the Lady, because Carsland's right from Haslehead was prior to the Lady's liferent. It was *answered* for the Lady, in this process, That she is not obliged to dispute the priority, or posteriority of her right, being secured by two unquestionable defences; the one is, that she is possessor *bona fide et facit fructus perceptos suos*, so that having bruicked by her infestment unquarrelled, she is secure, as to what is uplifted; and though in some cases law requires not only uplifting, but consumption, that is only in moveables, which may be extant, though uplifted, as stacks of corn, or stocks of cattle; but in rents which are liquid, being either in money or victual, the uplifting presumes the consumption, seeing none can be o-

No 23.
Not competent to plead a possessory judgment against the King.