

1688. *June 23.* MAJOR MURRAY *against* BAILLIE of TORWOODHEAD.

MAJOR Murray having pursued Baillie of Torwoodhead, as heir of line to the late Lord Bramfoord,—he alleged, That the Lady Forrester, the Lord Bramfoord's heir of line, who had right to his estate, ought to be first discussed. Answered for the pursuer, That it is declared, by a decret of Parliament, that my Lord Bramfoord's estate, for preservation of the family, should fall and belong to Edward Ruthven, his grandchild, passing by his mother, the heir of line; which decret of Parliament cannot be called in question by any inferior judge: and though it be quarrellable, as unjust, before the Parliament, yet creditors are only obliged to discuss the heir of line's unquestionable estate. Replied for the defender, That decreets of Parliament ought only to stand as to persons cited, and not as to such as were never called thereto. Now, the creditor, pursuer, was not cited, but only the Countess Dowager of Bramfoord, and that upon a bill, too, without a process. Duplied, The Act of Parliament, declaring, that sentences of Parliament are not to be quarrelled by inferior judges, doth not distinguish whether parties be cited or not, or if there be or be no compearance; and decrees of Parliament fall not under the act *salvo jure*. The Lords sustained the duply, and decerned against the heir of tailyie.

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1688. *June 29.* GARDINER *against* The LAIRD of LAG.

[See the prior part of this report, Dict. p. 1082.]

THEREAFTER it was alleged, That diligence by horning and caption, prior to the inhibition, was done on three of the bonds acquired; and any creditor, using prior diligence, may take his payment. Which the Lords sustained as relevant.

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1688. *July.* The LAIRD of ARNISTON *against* WILLIAM BORTHWICK.

ARNISTON having, after citation in a summons of mails and duties, at his instance, upon two infestments, infest himself upon another bond, compearance was made for William Borthwick, who craved to be preferred to the pursuer's first infestment, upon this ground, that they were base till a decret of mails and duties; and there was a signature for confirmation of Borthwick's infestment presented in exchequer before Arniston's process, although the confirmation was long posterior. Answered, The presenting of signatures is not considered, but the infestment thereon. The Lords preferred Arniston for the first infestments.

Thereafter the pursuer claimed preference likewise for the other infestment. Answered, That the posterior infestment could not be clothed by the prior citation. Replied, Borthwick's infestment being no otherwise clothed than by his producing the same, and competing thereon in the pursuer's process,