

that same process must also clothe the pursuer's second infestment, which is produced and debated on ; at least, it must come in *pari passu* with Borthwick's. Duplied, In a competition of base infestments, the first is always preferable ; and the pursuer's second infestment is posterior to Borthwick's. 2. Though a third party's competing is sustained as a publication of his right, 'tis not so where a pursuer competes in his own process. Triply, A pursuer producing a base right, and competing thereon with a third party, must be as effectual to clothe it with possession, as that third party's right would be clothed by his so doing. The Lords preferred Borthwick upon the first duply. And it was not known but that both infestments were otherwise unclothed.

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1688. *July.* ROBERT CAMPBELL, Dean of Guild in Glasgow, *against* GEORGE CLERK.

It being objected against the intimation of an assignation at the market-cross, to a party out of the country, that it did not design the debtor ; it was answered, That the Act of Parliament, appointing the designation of debtors, concerns citations in processes. Which was sustained. *Vide* No. 82, [Rigg against Sir William Primrose, March 1684.]

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1688. *July 6.* CAPTAIN DALZIEL and His SPOUSE *against* SCOTSTARBET, &c.

MR John Ellis, younger, advocate, having made a bond of tailyie of his personal estate to heirs-male ; which failing, to the daughters, with an express provision, That it should not be in the power of any of the heirs of tailyie to uplift the sums, without consent of some persons nominated, except that the daughters may make over their shares in their contract of marriage, with consent of other persons than the former :—Captain Dalziel, who married one of the daughters without the friends' consent, pursued a declarator for obliging these friends to consent, or getting the money, by the Lords' authority, without their consent. Answered for the friends, The succession to the sums, by the pursuer's contract, is not according to the father's destination, but goes to the Captain and heirs, failing children of his wife's body. 2. By a general provision, after all, the sums are not upliftable without consent of the subsequent immediate heirs of tailyie. 3. The father having given the friends a power to consent to the daughters' marriage, and consequently to dissent, that must have the effect of an irritancy, in case of marriage without their consent ; and, if their consent had been antecedently required, they had reason to refuse it, seeing the Captain was not able to make a suitable provision on his part, and the terms of the father's destination were altered. Replied, The provision hath no irritancy, or obligation *quoad* the marriage ; and many persons make as unequal matches. 2. The general exceptions being posterior to that, except in their contract of marriage, &c. does not derogate to the special ; for it is not probable the father would have