

No 45.
Found as above.

1732. *July.* CHILDREN OF LORD KIMMERGHAM *against* His CREDITORS.

A GENERAL assignation of moveables, with a power to intromit and enter to possession immediately upon the granter's decease, though possession be apprehended accordingly, is not sustained in our law as a transmission of the property, but these goods must be confirmed; and, without confirmation, the disposition, though clothed with possession, will be found no better right than a *jus crediti* for the value. The reason is, that the power to apprehend possession is a procuratory, *quod perit morte mandantis*, as procuratories did with regard to land rights before the act of Parliament; and, if confirmation be necessary, the assignee can stand upon no better footing than any other creditor. Thus, an assignation, in a contract of marriage to the wife, of the whole household plenishing that should belong to the husband the time of his decease, was found only to make the wife creditor for the value upon the implied warrandice, so as to bring her in *pari passu* with other creditors confirming within six months; but she was found to have no preference, though she got into the natural possession after her husband's decease, and also confirmed the subject prior to any step of diligence by the creditors. See SERVICE and CONFIRMATION.

Fol. Dic. v. 1. p. 180.

1794. *June 6.*

JAMES HARDIE DOUGLAS, and Others, *against* The TRUSTEE for the Creditors of THOMAS HAY.

No 46.
An assignation to a sublease, in security of debt, intimated to the principal lessee, but on which no possession had followed, found to be a valid ground of preference in competition with personal creditors of the cedent.

THOMAS HAY granted assignations of a sublease of a farm possessed by him to James Hardie Douglas and two other creditors, as a further security for debts due to them. None of the assignees entered into possession. Upon Hay's being made bankrupt, in terms of the act 1696, two of them intimated their rights to the principal lessee; the other did so, soon after, but not till Hay had executed a trust-deed in favour of his creditors. The deed declared, that the rights and preferences which creditors had already acquired should not be affected by it.

The trustee having sold the sublease, brought a multiplepoinding against the creditors, that their claims on the price might be ascertained. The assignees, none of whom had acceded to the trust, claimed a preference. The other creditors had executed no diligence against the estate of the bankrupt. The trustee for their behoof

Objected; An assignation to a sublease is ineffectual in a competition of creditors, unless it has been followed by possession; Ersk. b. 3. tit. 5. § 5.; Bank. b. 3. t. 1. § 16.; Stair, b. 3. t. 1. § 8. Intimation to the principal lessee, even although not liable to the objection of having been made after the bankruptcy