

HEIR CUM BENEFICIO.

- No. 1. 1736, Feb. 17. MURRAY *against* CRAWFURD.
 1738, July 11. CRAWFURD *against* YOUNG; and STRACHAN'S
 CREDITORS *against* HIS DAUGHTERS.

THE Lords found, (in the case of Murray against Crawford, 4th July 1735) that the heir *cum beneficio* could not stop the sale. 25th November, Altered.

In this grand question of the heir *cum beneficio*, the Lords adhered to the interlocutor 25th of November last, finding that the creditors could not carry on the sale, by the President's casting vote. *Pro* Minto, Drummore, Haining, Strichen, Tweddale, Dun, Leven. *Con.* Royston, Newhall, Justice-Clerk, Monzie, and *ego*. Kilkerran sick.—17th Feb. 1736.

The Lords (11th July 1738, in the cases of Crawford and Strachan) found that the creditors have a right to bring the estate to a sale, notwithstanding the heir offers the proven value. *Pro* were Royston, Justice-Clerk, Minto, Haining, Kilkerran, Balmerino, Monzie, Easdale, Murkle.

- No. 2. 1738, Nov. 28. CREDITORS of M'DOUALL of Crichen, *Competing*.

THE Lords unanimously found, that neither the priority of citation nor of decret of constitution can give any preference, notwithstanding the heir is served *cum beneficio*. But found, that while the subject is *in medio*, they ought to be preferred according to their real diligence against the subject, otherwise that they be preferred *pari passu*. Arniston justly observed, that to find otherwise would be quite inconsistent with our last judgment finding that the creditors can bring the estate to a judicial sale; though if our judgment had been otherwise in that point, he should have been of the same opinion in this question of preference.

- No. 3. 1741, June 19. CREDITORS of M'DOUALL of Crichen *against*
 CRICHEN.

THE Lords found that M'Douall must pay down the price and interest to a sequester to be appointed by the Court, to be employed profitably for the creditors. 2d July Adhered, and refused, except as to the debts due to himself, and remitted to the Ordinary to allow him to retain a proportion answering this on caution.

- No. 4. 1742, Nov. 12. MENZIES *against* DICKSON.

ONE infest by precept of *clare constat* in the property, purchased the superiority, and got a disposition containing procuratory and precept, with two charters of the lands, *a me* and *de me*, and on the procuratory obtained a charter from the Crown; but never was infest in the superiority; and his son possessed on his contract of marriage, wherein the father provided the lands to him; and the grandson served heir-general to the grandfather, and took infestment on the Crown's charter, but no otherwise infest himself in the property, nor did