

No. 9. 1742, Dec. 9. CREDITORS of PATERSON *against* M'AULAY.

M'AULAY, after being decerned in a sum of damages to Paterson for oppression and wrongous imprisonment, bought in some bills due by him. Paterson's creditors arrested, and M'Aulay pleads compensation, which Royston, Ordinary, sustained. But on a reclaiming bill, the lawyer for M'Aulay seemed to give up compensation, but pleaded retention, because Paterson is bankrupt. The Lords found there could be no compensation sustained after the decret, but remitted to the Ordinary to bear them on the retention.

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COMPETITION.

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No. 2. 1736, Dec. 1. CREDITORS of SIR JAMES DUNBAR.

THE Lords altered the Lord Ordinary's (Newhall) interlocutor, and found these creditors preferable according to their diligence, and not *pari passu*, as he had found;—and they were unanimous except the Ordinary, (the President absent.) Some thought the defunct could not by any deed however explicit prefer his creditors *pari passu*, and defraud them of the effect of their diligence to be raised; but there was some difficulty, because the creditors could not subsume in terms of either the act 1621 or 1696. But that which determined the whole was, that the disposition was not to the creditors, or to their behoof, but to Oliphant, with the burden of debts, which made him personally liable, though only *in valorem*,—but gave the creditors no right to the subjects disposed; and Oliphant behaved to pay the creditors according to their diligence, as in the known case of executors, and the case of heirs *cum beneficio*, as was decided in 1724, Mrs Scott against Sir Alexander Burnet of Leys; and as in the decision mentioned in the papers 17th December 1675, Creditors of Masterton against Creditors of Alice Thin, with respect to Alice Thin's own proper effects.—(DICT. No. 9. p. 11,830.)

No. 3. 1737, July 15. BELL of Blackwoodhouse *against* GARTHSHORE.

THE Lords preferred William Bell, whose right they found carried the personal right that was in the common author.—2d July 1736.

This case, which was first determined in July last, was also of that importance, that the Lords, after hearing it in their own presence, and getting informations, delayed it till this day, (21st June 1737,) when they altered their former interlocutor preferring Blackwoodhouse, as having first denuded young Chatto, who had but a personal right, and preferring Garthshore as having the first real right, *me et quibusdam aliis renitentibus*. Arniston owned that he had several times changed his opinion on this question even during the dependence of this process, but now he was of the opinion of the last interlocutor, and we both thought that notwithstanding that opinion, if one having a personal right should assign it, and thereafter be infest, and then grant a second disposition,