

the donatar of the liferent escheat, who had raised a general and special declarator after the other's decret;—The Lords preferred the creditor, in respect of his legal diligence, for the same reason that an arrester would have been preferred; though there seems to be this difference, that an arrestment is *nexus realis efficiens rem*; whereas the decret gives no real interest in the mails and duties till they be recovered: and this point of fact was not clear, whether the mails and duties were for terms subsequent to the annual rebellion, after which the right of liferent in the superior's person is considered as a real public right of the lands, and consequently would carry the duties, and be preferred to a posterior apprising, or voluntary right confirmed, *multo magis* to a personal creditor of the rebel's.

Page 115, No. 434.

1685. *February.* FRANK *against* CUNNINGHAM.

IN a competition for mails and duties betwixt one Cunningham an appriser, and Mr John Frank, as having right from Mr Moubray and his wife to another apprising, whereof she was fiar;—it was alleged for Cunningham, That Mr Frank's right was posterior to a written declaration granted by Mr Moubray, whereby he acknowledged his intromission with more of the mails and duties of the lands appraised than came to his share; and that he was willing that Cunningham, the other appriser, should intromit with the whole mails, till he received as much as Moubray had uplifted more as his share; which written declaration imports materially an assignation, though the paper be not formal; and Moubray's *jus mariti* was conveyable by assignation. Answered for Frank, That the right to Cunningham was but a factory, and could not be obtruded against a singular successor in the right of apprising. The Lords sustained the paper as an assignation.

Page 22, No. 114.

1685. *February.* LORD GRAY *against* The EARL of LAUDERDALE.

THE Lords reduced a right upon a reason of concussion, where there was no transaction or abatement.

Page 155, No. 557.

1685. *February.* JAMES CLELAND *against* PITLIVER.

FOUND, that, in a competition of base infeftment of annual-rent, the first citation and day of compearance before the Lords, was preferable to the posterior citation and first decret before the inferior judge, where the procedure is more summary than before the Lords. 2. Found, that, in voluntary rights, the first presenting of a right for confirmation was not to be considered, in order to give preference among base infeftments, which is ruled by the date of the charter and seal, because superiors are not obliged to confirm voluntary rights.

Page 166, No. 600.