

1729. December 18. HAY against BLACK.

A CREDITOR of a defunct having pursued a vicious intromitter with the defunct's effects, the bare citation was found to give him the benefit of the act of sederunt 1682. See APPENDIX.

Fol. Dic. v. 1. p. 206.

No 17.

1738. February 15. GRÆME against MURRAY.

AN executor-creditor having confirmed a bond due to the defunct, containing a greater sum than was sufficient to pay his debt, a competition arose upon the balance betwixt two other creditors of the defunct, each of them having raised a process against the executor-creditor, and insisted in their respective processes, while the executor-creditor was yet in *constituendo*, and had recovered no decret against the debtor in the bond; both citations being after the elapse of the six months; the one *insisted* for a preference upon his first action; the other *pleaded*, That citation makes no *nexus realis* upon the subject, and consequently is no foundation of preference; that the first decret must be the rule, and seeing no decret is yet obtained by either, they ought to be ranked *pari passu*. — THE LORDS brought the parties in *pari passu*. See APPENDIX.

Fol. Dic. v. 1. p. 207.

No 18.

Rules of preference of creditors doing diligence within six months of the debtor's decease.

1742. February 13. Competition CREDITORS OF CREICHEN.

THE act of sederunt 1662, ordaining, 'That the creditors using legal diligence within six months of their debtor's death, by citing executors-creditors, intromitters with the defunct's goods, &c. shall come in *pari passu* with the other creditors, who have used more timely diligence, by obtaining themselves decerned and confirmed executors-creditors, or otherways,' was not intended to prefer the creditors who had inchoate diligence within the six months, before those who commenced their diligence after it was elapsed; but barely to disappoint those creditors who, by taking the start, have completed their diligence within the six months; which is done by bringing in *pari passu* with them, all other creditors who have done any sort of diligence within the six months. But the competition among creditors, some of whom have done diligence during the six months, others after, is left to the determination of the common law. See APPENDIX.

Fol. Dic. v. 3. p. 167. Rem. Dec. v. 2. No 27. p. 43.

No 19.

The same subject.