No 1.

After the Captain's death, his eldeſt ſon John ſucceeded to his eſtate; and he, without making up titles, having added to his father's debts his own contractions; the creditors, upon the medium of ſpecial charges, proceeded to adjudge not only the eſtate of Carleton, but alſo the ſaid houſes and acres, which were underſtood to be *in hæreditate jacente* of the Captain.

A ſale being raiſed, Samuel Fullarton appeared in the ranking; and obſerving that Murray was ranked *primo loco* upon the houſes and acres, *insisted*, That if Murray choſe to draw his payment out of theſe ſubjects, he ought to aſſign his adjudication, in order that Samuel might draw, out of the eſtate of Carleton, whatever ſhould be drawn out of his own eſtate, by virtue of the heritable bond.

'It carried by a plurality, that Samuel, to whom the houſes and acres were diſponed with abſolute warrandice, was, for that reaſon, entitled to the aſſignment demanded.'

The matter was conſidered in the following light: That Samuel Fullarton was in effect cautioner in Murray's debt; and, therefore, that the adjudication led by Murray was to be conſidered as a ſecurity for Samuel the cautioner, as well as for himſelf; and that Samuel, upon payment out of his ſubject, was entitled to demand from the creditor, an aſſignment to his debt and diligence. *See* CAUTIONER.

Rem. Dec. v. 2. *No* 123. *p.* 259.

1776. *August* 8.

DUNLOP, and OTHER TRUSTEES of CARLYLE and Co. *against* SPIERS and Others.

No 2.
Creditors of a Company drawing dividends out of the eſtate of an individual partner of the Company, found, in certain circumſtances, obliged to aſſign to the creditors of the individual, in order to operate relief from the eſtates of the other partners.

MESSRS JAMES DUNLOP, DOUGLAS, and WHITE, entered into co-partnery, under the firm of James White and Company; and afterwards, on White's death, a new co-partnery was formed betwixt James Dunlop, Douglas, Carlyle, and Gavin White, under the firm of John Carlyle and Company. This co-partnery failed in 1763; and their creditors following joint meaſures, named certain of their number truſtees for the whole; and the ſame perſons were likewiſe, at the ſame time, appointed truſtees by Carlyle and Company, for gathering in and dividing their effects. At the time of the failure of Carlyle and Company, the firſt Company of White and Company ſtood indebted to them in L. 5072 Sterling; and the whole debts due by James Dunlop to Carlyle and Company, both on his private account, and as a member of the co-partnery of White and Company, amounted to about L. 12,000 Sterling. Spiers, Blackburne, and others, who had been appointed truſtees for the creditors of James Dunlop, who had become bankrupt a ſhort time before the failure of Carlyle and Company, in which he was engaged, were purſued by the truſtees of the creditors of Carlyle and Company, who claimed to be ranked on Dunlop's funds, both for the debts due by him to Carlyle and Company, and likewiſe for the whole debts due to the purſuers and their conſtituents by that Company itſelf.—*Urged* in defence, That the purſuers cannot be allowed to claim payment from the eſtate of James

No 2.

Dunlop, both of the debts due by him to Carlyle and Company, and of the whole debts due by that Company to their creditors; yet this is what they are inſiſting for. They claim to be ranked on Dunlop's eſtate for L. 17,000, as the amount of the debts due by Carlyle and Company, and moreover for the ſum of L. 12,000, ſaid to be due by him to that Company; not indeed to the effect of drawing full payment of both ſums, but with this quality, that in conſequence of this double ranking, they ſhall draw no more than L. 17,000 Sterling, due to the creditors of the Company. But this is not juſt; for if this laſt ſum be the whole they are entitled to draw, they can have no claim to rank for more; and, being once ranked for that ſum, it is not competent to rank them for any other ſum whatever. If Dunlop pays the firſt claim, viz. the debts due by Carlyle and Company to their creditors, the debt due by himſelf to the Company, muſt be extinguiſhed.——THE LORDS found, That the truſtees for the creditors of Carlyle and Company were entitled to be ranked on Dunlop's eſtate, for the amount of the debts due by him to the ſaid Company; and that, after imputing the dividend ariſing from the debt ſo due, and the dividend already paid from the Company's effects, in extinction of the Company's debts, along with the other funds of the Company yet undivided, the ſaid purſuers are entitled to be again ranked on James Dunlop's eſtate, for the balance that will then remain due to the creditors of Carlyle and Company; the truſtees of Dunlop being entitled to an aſſignation from Carlyle and Company's creditors, ſo far as they ſhall draw on the ſaid ſecond ranking; for the purpoſe of operating relief on Dunlop's eſtate, from the other partners of Carlyle and Company; in ſo far as the ſaid creditors ſhall draw from Dunlop's eſtate more than his proportional ſhare as a partner of the Company.

Fol. Dic. v. 3. *p.* 71.

1779. *December* 9.

LUDOVICK GRANT, *againſt* MANSFIELD, RAMSAY, and Company.

No 3.
A creditor recovering payment out of the eſtate of the principal debtor, found not bound to aſſign to poſtponed creditors, on that eſtate, his right of action againſt a cautioner.

MR CHARLES GASCOIGNE entered into a minute of ſale with Sir James Campbell, concerning the lands of Dalderſe, belonging to the latter. The price was L. 27,000; of which L. 15,000 was to be heritably ſecured on the lands themſelves; L. 3000 was to be paid immediately; and, for the remaining L. 9000, Mr Gaſcoigne, the purchaſer, and his two cautioners, Mr Francis and Mr Samuel Garbet, were to grant a perſonal bond, which was to be guaranteed by an aſſignment of L. 12,000 capital ſtock of the Carron Company, belonging to Mr Samuel Garbet.

After the execution of this minute of ſale, which contained neither procuratory of reſignation, nor precept of ſaſine, Mr Gaſcoigne, the purchaſer, and his two cautioners, became inſolvent; and Sir James Campbell, in addition to the collateral ſecurities formerly ſtipulated, inſiſted, that the whole price ſhould be-