

1728. *July.*MAIR *against* BALLANTINE.

No 70.

IN a competition betwixt an apprising and a voluntary disposition, the LORDS in respect that the disposition was prior to the denunciation of the apprising, preferred the voluntary right completed by confirmation of the superior, although posterior to the charge upon the comprising, in regard the charge was only to be considered in competitions of diligences among themselves, but not with voluntary rights. See APPENDIX.

*Fol. Dic. v. 1. p. 182.*

1749. *December 3.*BINNINGS *against* The CREDITORS of Auchinbreck.

No 71.

An adjudication not followed forth, cannot compete with a posterior voluntary infestment.

CHARLES MAITLAND of Hatton, afterwards Earl of Lauderdale, by several deeds settled upon his son Alexander 25,000 merks, payable at his death; and having deceased, Alexander obtained a decret of cognition, against Earl Richard his son, who renounced to be heir; and thereupon led an adjudication 1694 for his principal sum, with interest, from a blank term; and, after Richard's death, transacted his claim with Earl John his brother and successor, for 20,000 merks, with interest from Whitsunday 1697.

Another creditor had adjudged 1694, and was infest 1695; and Sir William Binning of Wallyford adjudged also 1694, upon which he raised a process of mails and duties 1696, wherein there is a minute 1699, but there was no further procedure.

Earl John granted an heritable bond 1706, out of the lands of Glassery, to Sir Robert Blackwood of Pitreavie; whereon he was infest, and conveyed it to Sir James Campbell of Auchinbreck, who had purchased these lands from the Earl of Lauderdale, and also bought in Mr Alexander Maitland's adjudication extending over them.

In the ranking of Auchinbreck's Creditors, Mr William Binning of Wallyford, and Jean Binning, as representing Sir William, claimed the lands of Glassery, in virtue of his adjudication; and *objected* to Mr Alexander Maitland's adjudication, That the sums for which it was led, fell only due on the death of Earl Charles, of which there was no proof in the decret of constitution; and this was the more fatal, as the interest was adjudged for, which run from his death, the time whereof did not appear: It might be hard totally to annul a diligence, on account of inaccuracy, in a question with the debtor; but here was a competition of diligences, in determining whose preference greater exactness ought to be observed.

*Answered*, It was notorious Earl Charles was dead, and his heir appeared and renounced; after which, there needed no further proof. And the adjudication being led for the principal, with interest from a blank term, was equal as if no