

No 66.

It was found, that no debts posterior to the disposition, could come in competition with the debts prior to the same. See APPENDIX.

*Fol. Dic. v. 2. p. 68.*

No 67.

1734. July 5. VISCOUNT OF OXFORD *against* OFFICERS OF STATE.

AN act of the fifth of King George I. entitled, An a act for enlarging the time to determine claims on the forfeited estates; provides, 'That superiors shall be obliged to pay a proportional share of the true and lawful debts of the attainted persons, answerable to such estate, as shall be found to belong to them by virtue of the clan act.' Upon this clause, a competition arose betwixt the superior's personal creditors, affecting the rents by virtue of arrestments, and the personal creditors of the forfeiting person, whose estate it had been; in which competition, the creditors of the forfeiting person were found preferable, the estate being supposed to devolve to the superior, with the burden of the forfeiting person's debts, though not so expressed in the clause. See APPENDIX.

*Fol. Dic. v. 2. p. 67.*

1738. January 10.

CREDITORS of SMITH *against* His BROTHERS and SISTERS.

No 68.

In a disposition of a land estate, by the proprietor to his eldest son, there was inserted the following clause; "as also these presents are granted, with the express burden of the payment of 8000 merks, which the said James my son, by acceptation hereof, binds and obliges him to content and pay to John, Gilbert, &c. my younger children, equally amongst them." In a competition betwixt the younger children, and the creditors of the eldest son, the question was, whether it was a personal burden only, or both a personal and real burden. The creditors *pleaded*, That there is a personal burden plainly established, and the clause does not necessarily import any thing further; and therefore, to found upon the same clause, as also inferring a real burden, which is a right of a quite separate nature, is truly establishing rights and conveyances, by conjecture and implication, contrary to the principles of law and of reason. THE LORDS, notwithstanding, found the above clause in the disposition made the provision real. See APPENDIX.

*Fol. Dic. v. 2. p. 67.*