HEIR CUM BENEFICIO.

No. 1. 1736, Feb. 17. MURRAY *against* CRAWFURD.
1738, July 11. CRAWFURD *against* YOUNG; and STRACHAN'S CREDITORS *against* HIS DAUGHTERS.

THE Lords found, (in the case of Murray against Crawfurd, 4th July 1735) that the heir *cum beneficio* could not stop the sale. 25th November, Altered.

In this grand question of the heir *cum beneficio*, the Lords adhered to the interlocutor 25th of November last, finding that the creditors could not carry on the sale, by the President's casting vote. *Pro* Minto, Drummore, Haining, Strichen, Tweddale, Dun, Leven. *Con.* Royston, Newhall, Justice-Clerk, Monzie, and *ego*. Kilkerran sick.—17th Feb. 1736.

The Lords (11th July 1738, in the cases of Crawford and Strachan) found that the creditors have a right to bring the estate to a sale, notwithstanding the heir offers the proven value. *Pro* were Royston, Justice-Clerk, Minto, Haining, Kilkerran, Balmerino, Monzie, Easdale, Murkle.

No. 2. 1738, Nov. 28. CREDITORS of M'DOUALL of Crichen, *Competing*.

THE Lords unanimously found, that neither the priority of citation nor of decreet of constitution can give any preference, notwithstanding the heir is served *cum beneficio*. But found, that while the subject is *in medio*, they ought to be preferred according to their real diligence against the subject, otherwise that they be preferred *pari passu*. Arniston justly observed, that to find otherwise would be quite inconsistent with our last judgment finding that the creditors can bring the estate to a judicial sale; though if our judgment had been otherwise in that point, he should have been of the same opinion in this question of preference.

No. 3. 1741, June 19. CREDITORS of M'DOUALL of Crichen *against* CRICHEN.

THE Lords found that M'Douall must pay down the price and interest to a sequester to be appointed by the Court, to be employed profitably for the creditors. 2d July Adhered, and refused, except as to the debts due to himself, and remitted to the Ordinary to allow him to retain a proportion answering this on caution.

No. 4. 1742, Nov. 12. MENZIES *against* DICKSON.

ONE infeft by precept of *clare constat* in the property, purchased the superiority, and got a disposition containing procuratory and precept, with two charters of the lands *a me* and *de me*, and on the procuratory obtained a charter from the Crown; but never was infeft in the superiority; and his son possessed on his contract of marriage, wherein the father provided the lands to him; and the grandson served heir-general to the grandfather, and took infeftment on the Crown's charter, but no otherwise infeft himself in the property, nor did

he serve heir to his father. This found no consolidation, and that he had only right to the superiority.

1741, Dec. 15.

First find that the property and superiority were not consolidated in the person of either Alexander third or Alexander fifth, and find that the pursuer the heir of Alexander third cannot quarrel the charter by him to his brother John 3*tio*. A hearing January 8th. Whether the pursuer as heir served to the last Coulterallers though *cum beneficio* can quarrel any of his deeds, though concerning subjects not in the inventory? and to lay before us at same time the value of the subject; and 28th January 1742 adhered as to the two first points. As to the other point on which the hearing was appointed, they found that the service even *cum beneficio* bars him from quarrelling the deeds of Alexander fifth. 12th November 1742 The Lords altered, and found him not barred by his service.

(Reference is in the Dictionary erroneously made to the title SUPERIOR AND VASSAL.)

No. 5. 1749, July 12. SIR KENNETH M'KENZIE, *Supplicant.*

THE petitioner being at Mahon when his brother Sir George died 20th May 1748, leaving a wife, and not known whether with child or not, the petitioner could not at that distance record inventories in order to a service *cum beneficio;* and the Sheriff-clerks scrupled to record them. Now therefore he prayed for our authority,—and we authorized the recording, but would not determine what effect that would have,—and therefore reserved to all parties to be heard on the effect of such recording.

HEIR-PORTIONER.

No. 1. 1743, Feb. 1. PEADIE *against* PEADIES.

THE Lords found, (*me referente*) that the principal messuage, with office-houses, yards, and orchard, belongs to the eldest heir-portioner without division and without any recompense to the other heirs-portioners. This passed without a vote, but several were of a different opinion in point of law, had it not been the precedent 1707, Cowie against Cowie, (DICT. No. 6. p. 5362.) particularly the President, Murkle, and I.

No. 2. 1744, Nov. 2. LADY HOUSTON *against* SIR GEORGE DUNBAR.

AN estate devolving to three several heirs-portioners, wherein there were two feu-superiorities, the question was, whether the eldest had right to sell the superiorities without recompense, or if they should divide?—and consequently, if there were but one, that there behoved to be a recompense. Drummore thought the eldest had right to both superiorities without any recompense,—but after he read Lord Stair he altered his opinion. Arniston thought the eldest had her election of one, and that without any recompense,—that the