

favour of his second son David Blair, reserving a faculty to alter, but which faculty he afterwards renounced in his son's contract of marriage. M'Guffock of Rusco being overcharged with debt, his estate, in the year 1727, was brought to a sale, and the said Irvine of Logan, who had adjudged all his debtor's lands for the above-mentioned debt of L. 2000, was ranked as a preferable creditor; and, upon his drawing payment, it was demanded by the other creditors, that he should assign them to his infertment upon the lands of Borgue. This was opposed by the relict and children of Borgue, upon this medium, That by Rusco's disposition to his second son, and after consent in that son's contract of marriage, he became bound to warrant the said lands, the consequence whereof was, that had Irvine of Logan drawn his whole sum out of their lands, they must have been entitled to demand assignation against Rusco, bound to them in warrandice.—*Answered*, Rusco was never bound to warrant against Logan's debt; the disposition was under a reserved faculty to contract debt, alter, and dispose of the estate, &c.; and supposing the son had paid the debt, he could never have distressed his father for the same; and consequently, an assignation would have been fruitless and ineffectual; nor did the father's after consent in his son's contract of marriage, which implied a renunciation of his faculty, alter the case: For this would not be drawn to import an obligation upon the father to warrant or relieve his son of the foresaid debt.—THE LORDS refused the assignation.

No 30.

*Fol. Dic. v. 1. p. 224.*1729. June 13. MR HENRY RAMSAY *against* The BANK of SCOTLAND.

A CREDITOR, ranked in the second place, did, after the ranking, purchase in the preferable debt, and having these two rights in his person, he became purchaser of the estate at a public sale, and gave bond for the price, payable to the creditors as they were ranked; the preferable debt purchased in by him, as said is, did not only reach over the lands purchased by him at the public roup, but also over a separate subject belonging to another. The fact was, that the price of the lands, sold publicly, was but sufficient to answer the preferable right; and therefore, the purchaser, willing to bring his secondary claim within the price, craved payment of his preferable right, entirely out of the separate subject; which the LORDS refused, and found, That the said debt, being in the person of the purchaser of the lands, upon which it was ranked *primo loco*, which purchaser granted bond for payment of the price to the creditors as ranked, the said debt became *eo ipso* extinguished *confusione*, and could not revive to be a charge upon the separate subject. *See* APPENDIX.

No 31.

A purchaser of an estate who had purchased a preferable debt, affecting both that estate and another, was found to have no claim on the separate estate, but that the debt was extinguished *confusione*.

*Fol. Dic. v. 1. p. 224.*