No. 2. 1734, Jan. 9. THOMAS LAWRIE of Corkelferry, *Supplicant.*

IN a ranking and sale of a house in the head of the Canongate newly built but not finished or made habitable; on a petition by the pursuer of the sale for liberty to finish and make it habitable, and that the expense should be declared a preferable debt, the Lords on advising the petition without answers, refused the bill, because these were not reparations but new finishing.

No. 3. 1734, Nov. 20. EARLS OF LOUDOUN, &c. *against* LORD ROSS, &c.

THE Lords found, that notwithstanding these Earls were ranked *primo loco* on the lands of Gulston, yet not having drawn the whole by reason of a prior inhibition and the common expenses of ranking and sale, that they ought to be ranked on the lands of Bruntswood for what remained due after these deductions; but found that they could not be even ranked for the whole sums in their adjudication but only for what remained so due.

This last being reclaimed against, the Lords altered and found they should be ranked for the whole so as to draw only what remains due.—20th November 1734 The Lords adhered.

No. 4. 1736, Feb. 13. CREDITORS, &c. of MR A. FALCONER, *Competing.*

See Note of No. 3. *voce* ALIMENT.

No. 5. 1739, Nov. 9. BAILIE THOMAS DUNDAS *against* LORD ROLLO.

THE question though about a small subject was of some importance: How far a sale before the Lords could be quarrelled by a third party having right to the subject not derived from the bankrupt? The Lords found that Henry Wylie the son and heir of Henry as well as of Thomas the bankrupt being called in the sale, neither Henry nor any of his creditors can quarrel the sale; and they thought the act of Parliament had the same effect, which provides that the subject shall be free from the debts and deeds of the bankrupt or his predecessors;—and Henry's right flowed from the predecessor of the bankrupt. Afterwards adhered.

No. 6. 1741, June 26. CREDITORS OF KERSLAND *against* SCOTT.

FIND that Mr Scott is entitled to retention of a capital that will answer to the whole teinds of the vassal's lands, the same not exceeding the feu-duty, until the creditors shall give Mr Scott a sufficient right to the said whole feu-duties.

No. 7. 1741, Dec. 8. STIRLING *against* CAMERON.

A question occurred on this petition for Stirling, Whether when an estate is sold as bankrupt, and eventually there happen a reversion after paying the whole debts, a general

service of the apparent heir is sufficient to carry the reversion, or if he must be infeft in order to convey to the purchaser? They remitted to the Ordinary in the ranking to report the fact and to hear parties on the title. The President thought the general service enough, of which Arniston and I greatly doubted.

No. 8. 1742, July 21. STIRLING *against* CAMERON.

AT a sale of an estate as bankrupt on the act 1681, the price having arisen far above the extent of the debts, the apparent-heir, who had renounced to the creditors adjudging, now served heir to make title to this reversion of the price;—but on report of Haining we found that he must make up a real right to the lands.

No. 9. 1742, Dec. 15. M'KENZIE *against* THE BANK OF SCOTLAND.

PRESTONHALL and Fraserdale were debtors by an heritable bond to Alexander Paterson in L.2000 sterling, which Mr Paterson with Prestonhall's consent made over to the Bank and gave himself a corroboration. Thereafter Fraserdale sold the estate of Prestonhall to Mr Paterson, and left money in his hands to pay this debt, and got a bond of relief. Mr Paterson gave a bond of corroboration to the Bank, and was in use to pay the annualrent. Upon his bankruptcy the Bank was preferred *primo loco* for the principal and annualrent, but with the burden of the share of expenses in the usual form, whereby they wanted about L.76 of principal and annualrent, for which they charged Fraserdale on his original bond. At first the question was given for Fraserdale, and the grounds were, that the Bank accepted Mr Paterson's bond of corroboration which superseded execution against him till the then next term, and gave him one half *per cent.* abatement of the annualrents, as Prestonhall also had. But as the Court thought these no sufficient grounds to infer an innovation, where the bond was expressly corroborative, they the 24th February last altered and found the letters orderly proceeded. But upon a reclaiming bill Arniston and Kilkerran altered their opinions upon a ground not mentioned in the papers, and that to me and others seemed exceedingly new, viz. that the Bank had got payment of their whole debt although their share of expenses was by the rules of the Court drawn back, and that Fraserdale was not liable to pay them these expenses drawn back. Others of us, particularly President and I thought that the Bank cannot be said to have got more than what they received in cash from the purchaser; that Mr Paterson would be liable for that deficiency however occasioned; and that Fraserdale was equally bound with him, which is the case of all cautioners in heritable bonds. Yet upon the question it carried by a good majority that Fraserdale was not liable; and 5th January 1743 we adhered.

*** The case of Prestonhall's creditors, 22d December 1738, (being a sequel of No. 5. *voce* COMPETITION here referred to,) is mentioned thus:

Some of the Lords doubted whether the infeftment for the penalty could be effectual, but as this was determined in the decreet of ranking and did not lie before us, we could not alter that, though I thought were the point entire that the infeftment was effectual and the judgment right; and as to the rest we adhered to the Ordinary's interlocutor in all