

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 annual-rent. 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was given for Fraserdale, and the grounds were, that the Bank accepted Mr Paterson's bond of corroboration which superseded execution against him till the then next term, and gave him one half *per cent.* abatement of the annualrents, as Prestonhall also had.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 decret 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