

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was given for Fraserdale, and the grounds were, that the Bank accepted Mr Paterson's bond of corroboration which superseded execution against him till the then next term, and gave him one half *per cent.* abatement of the annualrents, as Prestonhall also had.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

points, and found that the petitioner could not have allowance of the expense of the erroneous infestment; 2dly, That for the expense of the adjudication he could only be preferred on the superiority, but from this last I own I differed; 3dly, That he could not be preferred for his proportion of the expense of the ranking and sale. Arniston was much against this last.

NO. 10. 1743, Jan. 5. BANK OF SCOTLAND *against* FRASERDALE.

(The competition between these parties took place in the ranking of Prestonhall, relative to which see the note immediately above.)

NO. 11. 1743, July 12. RANKING OF THE CREDITORS OF PORTRACT.

A creditor being infest for principal annualrent penalty and termly failzies, the question was reported, whether in a ranking this creditor should be preferred for his penalty or termly failzies in so far only as extended to the expenses of completing his right, according to our judgment in the case of Prestonhall, or if he should be preferred also for the expenses of ranking and sale; and we gave the same judgment as in the case of Prestonhall, viz. to prefer him only for the expense of completing his title.

NO. 13. 1748, Jan. 29. COMPETITION OF THE CREDITORS OF BLAIR.

THIS estate being sold at the instance of the apparent-heir on the act 1695, one creditor had adjudged before the sale on a *cognitionis causa*, and two creditors adjudged after but within year and day of the first, and other creditors did not at all adjudge. The question was,—In the division, whether the three adjudgers should be preferred *pari passu*, being within year and day, or if the first ought not to be preferred, and the two adjudications after the sale were not inept?—or if the whole ought not to be preferred *pari passu* whether adjudgers or not, because the sale which is an adjudication was for their behoof? And we found that the whole creditors whether adjudgers or not ought to be preferred *pari passu*.

NO. 14. 1748, July 1. BLACKWOOD *against* EARL OF SUTHERLAND.

A decret of ranking and sale of the estate of Dudhope being quarrelled at Mr Blackwood's instance to the end that he might be restored to his due place in the ranking and be preferred in an annualrent of L.11,000 that formerly belonged to Sir George Hamilton affecting that estate, and to which he had right by disposition 1702 and infestment thereon in 1706 in the person of Sir Andrew Fleming of Farm, from whom he had adjudged; whereas in the decret the Earl of Sutherland and others are preferred to him on a disposition by Sir George in 1699, though no infestment followed till 1709, so three years after his, because he had not then produced Farm's sasine, but which he has since discovered and now produces. The first ground of reduction was, that Janet Hepburn, in whose name these processes were carried on was dead several years before it was raised. Defences were, that in rankings and sales the pursuers are often but nominal, without any