

1760. *February 20.*

JOHN RUSSEL, Trustee for WILLIAM BELCHIER, *against* The PERSONAL CREDITORS of the Deceased JOHN HAMILTON of Grange.

No 9.

The creditors of an apparent heir, who has sold his predecessor's estate upon the act 1695, have no claim upon the price till all the predecessor's creditors are paid.

JOHN HAMILTON, heir apparent of the estate of Grange, did, upon the act of Parliament 1695, bring a process of sale of his predecessor's estate in July 1744. The act of roup was pronounced February 1748; and the land being exposed to sale July 1750, William Belchier merchant in London was preferred, as highest offerer, at the price of L. 62,200 Scots.

During the dependence of this sale, Belchier having advanced several considerable sums to Hamilton, knowing him to be heir apparent only, did, after purchasing the estate, convey his debts to a trustee, who having arrested in the hands of Mr Belchier as debtor in the price, produced his interest in the ranking of the creditors, and craved to be ranked upon his arrestment.

This point was considered independent of the arrestment; and it occurred, that when the predecessor's estate is sold by the heir apparent, the price comes in place of the land. The personal creditors of the ancestor can claim, because the land is sold for their behoof as well as for behoof of the real creditors. But the personal creditors of the heir apparent have no claim to the price, because the estate did not belong to their debtor. It is true, that a method is prescribed by law, empowering the creditors of an heir apparent to charge the debtor to enter heir, which will entitle them to adjudge the estate for their payment. But this method is impracticable after the estate is sold; for it would be absurd to charge the heir to enter to an estate which is no longer in *hereditate jacente*. Nor can the creditors of the heir apparent avail themselves of the act 1695, supposing their debtor to have been three years in possession. For, in the *first* place, that act is not made for behoof of those who deal with the heir apparent *qua* such. And, in the *next* place, it gives not to the heir's creditors any claim to the land, making only a passive title against the next heir passing by.

THE COURT next took under consideration the arrestment, with respect to which there was no difficulty. The arrestment of the price in the purchaser's hand cannot, from the nature of it, be extended further than the interest that John Hamilton the common debtor has in the price. Now his interest is as heir apparent only, which is nothing but the surplus, after all his ancestor's creditors are paid. And therefore, this arrestment cannot be brought in competition with any of these creditors.

'The creditors of the ancestor were accordingly preferred.'

*Sel. Dec. No 160. p. 220.*

1773. *February 25.*

ADAM BELL, Trustee for the Creditors of JOHN MORTON, the Elder, *against* RICHARD LOTHIAN.

No 10.

The creditors of a person deceased,

JOHN MORTON, the elder, who was proprietor of the lands of Blackbriggs, died in May 1767. Within a year from his death, John, his son, being debtor