

It was OBJECTED, 1st. That John Watson, a real creditor by an adjudication, was not called. ANSWERED,—The Act of Parliament 1681 obliges the pursuer of the sale only to call real creditors who are in possession; for he cannot know others: And though there was a factor here, put in by the creditors, or the Lords for their behoof, yet that did not put him in possession; because *non constat* if, in the event of the ranking, he would fall to have any share. The Lords found there was no need of calling him.

2do. It was OBJECTED, that some pupils, called Leiths, who were infest in an annualrent, and in possession, by getting payment of their yearly annualrents, were not cited, by the first diligence, to hear the probation of the rental led, which was the principal part of the process, but only cited on the act; and, even then, that only their father, as administrator, was cited, and not themselves; which was a nullity.

The Lords repelled this objection, and found the infestment of annualrent, being a servitude, could not properly attain possession; and that the citing the father, as tutor, upon the second diligence, was sufficient, seeing he concurred in the roup: and, at most, the Lords thought the omission of not citing one creditor, could not annul the roup and sale *in totum*, but allenary *quoad* that creditor's interest; and, if the buyer was content to stand to the bargain, with the hazard of that creditor's debt, the roup was not to be reversed; for they, turning now one of the most solid securities for conveyance of lands, they are not to be loosed nor overturned upon small informalities and omissions.

Vol. I. Page 624.

---

1694. June 30. SIR JOHN HALL of DUNGLASS against SIR WILLIAM SHARP of STONYHILL.

IN Sir John Hall of Dunglass's process with Sir William Sharp of Stonyhill, the question occurred,—If a creditor singly, by warrandice in a disposition, before a distress, may pursue a reduction of a right, on the Act of Parliament 1621, as prejudicial to him, *declaratoria juris*, to take effect when the distress, or eventual eviction, shall exist.

The Lords remembered, that, in Robert Burnet's case, they allowed a cautioner, before distress, to adjudge, lest he should be without year and day; and so they found here he might pursue a reduction *declaratoria juris*. Sir George M'Kenzie, in his commentary on the said act 1621, is also of this opinion.

Vol. I. Page 624.

---

1694. June 30. The EARL of CASSILLIS, Petitioner.

THE Earl of Cassillis gave in a bill, craving that Tarbet, clerk-register, might be ordained to give him an extract of an Act of Parliament he obtained in July 1690, declaring, that the inhabitants of the bailiary of Carrick, which jurisdiction belonged heritably to him, were not answerable to the Sheriff-courts of Air.

The Lords refused to meddle, or interpose their authority, in commanding