

effectual interest, as is often the case of processes of multiplepointing; and in this case the competition betwixt Mr Blackwood and these defenders depended four years, wherein he forced them to prove the tenor of their sasine 1709, which therefore ought not to be annulled because of a mistake in the name of the pursuer, whose interest was found entitled to draw nothing; 2dly, Even this objection is competent and omitted by Mr Blackwood; 3dly, The regulations 1695 art. 18. provide that nullities in decreets *in foro* shall operate no further than to redress the party's prejudice by the nullity. The Lords sustained the objection and found the decret void and null, and would not confine it, as Mr Blackwood proposed, to restoring him against it but to subsist as to the rest. But 3d January 1749, we altered, and sustained the decret, but allowed Mr Blackwood to be heard on his infetment notwithstanding its being omitted in the former process.

No. 15. 1748, July 28. SALE OF RUTHERFORD'S ESTATE.

UPON my report without informations for advice, the Lords found that the pursuer might pursue a sale on the act 1695 notwithstanding he is served heir in general *cum beneficio inventarii*.

No. 16. 1749, June 17. CREDITORS OF CROWDIEKNOWS.

IN the division of the price, from William Maxwell being creditor in a great sum by an heritable bond and infetment for security of his penalty as well as his principal sum, and accordingly preferred in the decret of ranking for his penalty to be restricted to his necessary expenses, the accountant stated a doubt which at the desire of the lawyers I reported this day for advice: Whether he should draw his penalty so as to relieve him of his share of the expense of ranking and sale? And the Lords found, agreeably to the act of sederunt and former practice, that he could not, but behoved to defray the expenses himself. *Vide* the cases of Prestonhall, Fraserdale, and Portract. (*supra*.)

No. 17. 1750, Jan. 6. SALE OF THE ESTATE OF ARKLAND.

A pursuer of a sale dying after decret of ranking, and just before they were proceeding to the roup, the Lords on the act 1711 granted warrant to another creditor Bailie Montgomery to carry on the sale; and found no necessity of calling the last pursuer's heir; which last appeared to me odd, since if any other creditor had died, the sale by that act must have stopt till his heir had been called; and it was thought that had he died during the ranking even his heir must have been called. At common law on the death of any party once admitted into a process, it must stop till his heir be called;—and that act makes no distinction at what period of the process he dies.

No. 18. 1750, Feb. 2. CREDITORS OF SIR ALEXANDER HOPE, *Competing*.

See Note of No. 12, *voce* INHIBITION.