

No 48. 1744. the term of the purchaser's entry, accumulated at that term into a principal sum.'

For the creditors in right of the heritable bond, *M^cQueen*
Alt Dav. Dalrymple, sen. et Advocatus.

A. R.

Fac. Col. No 68. p. 118.

SECT. XI.

The Sale must comprehend the Debtor's whole Estate.

1749. *January 11.* SIR HARRY MONRO *against* BAYNE.

No 49.

It was found, That a sale could not proceed on a summons not containing the debtor's whole lands, though these omitted were lands to which he had only succeeded, but was not entered.

Fol. Dic. v. 4. p. 211. Kilkerran, (RANKING and SALE.) No 6. p. 471.

* * * D. Falconer reports this case :

SIR HENRY MONRO of Foulis raised a process of sale of the estate of Kenneth Bain of Tulloch, omitting out of the summons a little piece of ground called Achnaclerach, to which the debtor had right as apparent heir to his brother, but was not infest in, it having been omitted out of Sir Henry's adjudication, but adjudged by other of the creditors, though when this question was determined, it was not cleared whether any of these adjudications proceeded on special charges, and consequently carried the lands.

Objected, That the sale could not proceed, as not comprehending the whole estate of the common debtor.

Answered, That it was not necessary a judicial sale should comprehend an estate to which an heir was not entered; but the LORDS had no regard to this. Then it was *pleaded*, The pursuers had adjudged and raised a sale of Achnaclerach, which they would bring in and conjoin with this process.

Objected, One sale cannot proceed on two summonses; and the defenders have executed a sale, which they will insist in, of the whole estate.

It was made a question on the Bench, whether this defect in the original summons could be supplied by an additional one to be conjoined; but it was observed, it could only be determined when the supplemental action was brought before the Court; as also, if the defenders should first bring in their

sale, it might then be determined, whether the pursuers, who had raised the first action, and were *in cursu* of supplying the defect thereof, were entitled to claim from them the management of the process; but at present they behaved to determine the cause as it lay before them.

THE LORDS found that the action could not be proceeded in.

Reporter, *Drummore.*

Act. *Lockhart & Brown.*
Clerk, *Justice.*

Alt. *H. Home & J. Grant.*

D. Falconer, v. 2. No 39. p. 36.

No 49.

1750. July —.

CRAWFURD, Petitioner.

COCHRAN of Ravelrig, as creditor to the deceased Laurence Crawford of Jordanhill, brought a ranking and sale of the estate of Jordanhill, wherein his son, Mr John Crawford of Jordanhill, was called and compearing. After the sale had come so far, that the lands were exposed to roup, and bought by William M'Dowal of Castlesempil, but the sale not yet approved, Mr John Crawford applied by petition for having the sale set aside, on this ground, that the whole of the common debtor's estate had not been valued, particularly, the superiority of the lands of Garbraid, which pay L. 5 Scots yearly of feu-duty; that although the same was contained in the summons of sale, and that the pursuer of the sale had sought and obtained a diligence for recovering the writs of the said lands, yet no notice was taken thereof, neither in the proved rental, act of roup, nor letters of publication.

THE LORDS, without requiring an answer, refused the petition, in respect the petitioner had been called and compearing in the sale.

There was no reasoning upon it. The interlocutor passed as a matter of course and a new proof was granted of the value of that separate subject.

Fol. Dic. v. 4. p. 211. Kilkerran, (RANKING and SALE.) No 13. p. 474.

No 50.
A sale approved, tho' the whole of the common debtor's estate had not been valued.

1784. December 25. MACPHERSON against TOD.

THE lands of Benchar, wadsetted more than a century before by the family of Borlum, had been included in the adjudications led against the present Borlum. They were likewise mentioned as belonging to him in the action brought for selling his estate. No proof, however, of their value was taken, and they were altogether disregarded in the subsequent proceedings.

After the other lands had been advertised for sale, Marjory Macpherson, one of the creditors, applied to the Court, by petition, insisting, that the reversionary right of the lands of Benchar should be sold at the same time with the other estate of the debtor. In this she was opposed, by the superior of these

No 51.
Ranking and sale must comprehend the whole estate of the debtor.