

1749. *June 29.* The CREDITORS of HAMILTON, Supplicants.

JOHN HAMILTON the apparent heir of his father, the deceased John Hamilton of Grange, pursued a sale of the estate of Grange upon the act 1695, which was brought the length of having day after day appointed for the sale by adjournment, nobody having appeared to offer. The Creditors, weary of the delay, applied to the Lords to lower the price, the height whereof they reckoned to be the cause why nobody offered.

This the LORDS refused to do upon the creditors' application, for that being a sale on the act 1695, it was thought the creditors could not take it up; and therefore the petition was let lie till the heir should declare himself.

Fol. Dic. v. 4. p. 208. Kilkerran, (RANKING and SALE.) No 8. p. 472.

No 16.

Whether the creditors may insist in a sale raised upon the act 1695, when the pursuer drops it?

1750. *January 6.*

MONTGOMERY and other ADJUDGERS of the Estate of MAXWELL of ARKLAND, Petitioners.

UPON the death of the pursuer of a sale, the other creditors applied to be allowed to take it up; which the LORDS granted, and "found no necessity to call the last pursuer's heir."

Some of the LORDS *urged*, That whereas by the fifth article of the act of sederunt 1711, it is enacted and declared, That in case of the death of the debtor or if any of the creditors, defenders, compearing and producing, shall happen to die, the process thereupon shall stop no longer than till their apparent heir be cited to compear upon a diligence, &c. so that if no person appear in the place of the common debtor, or creditor deceased, the LORDS declare they will proceed in the process where it last left, &c. as when parties alive do not compear; it is impossible to think the LORDS could mean, that in case of the pursuer's death, his heir should not have the same privilege of being called as any other creditor would have, though the clause is ill expressed.

Fol. Dic. v. 4. p. 208. Kilkerran, (RANKING and SALE.) No 10. p. 472.

*** D. Falconer's report of this case is No 118. p. 2240, *voce* CITATION.

No 17.

Whether after the death of the pursuer in a sale, the other creditors can take it up without calling the last pursuer's heir?

1750. *January 11.*

M'GILLIVRAY, Petitioner.

WHERE, in a ranking and sale, access could not be had to the rights of the lands, which lay in the repositories of the deceased common debtor in his house in Inverness-shire, the LORDS granted warrant for opening said repositories, &c.

No 18.