

extent of the whole heritage, he can have right to as apparent heir, and allowing the same to be carried off by adjudications. Nor will his creditors adjudging on his bonds, nor even his possessing upon these adjudications, give any ground of action against him to the creditors of the preceding apparent heir, who was three years in possession, though it would to the creditors of the defunct last infest the estate were carried off for the apparent heir's debt.

“The present question in this case is, that as a creditor of the apparent heir's adjudging for the apparent heir's debt, and even such adjudger's possessing upon such adjudication, will give no action to the creditors of the apparent heir upon the act 1695, because such possession is not the apparent heir's possession, whether an adjudication on a gratuitous bond and possession upon it have a different effect, where the obtainer of the gratuitous bond has it as an absolute gift.

“1758. *July 11.*—The Lords adhered.—They thought it is equal as if the apparent heir had taken right to the adjudication and then disposed it.”

1758. *July 18.* JACKSON and OTHERS *against* HALLIDAY and OTHERS.

THIS case is reported in *Fac. Coll. (Mor. 2769.)* The following is Lord KILKERRAN'S note :—

“*Nov. 16, 1757.*—On the first and general point, whether the subject was adjudgable or arrestable, the Lords altered their former interlocutor, and preferred the adjudgers.

“And by the President's casting vote that the arrestment in the hands of Duke and Brown was the only proper arrestment: this was on the supposal that the subject was arrestable.

“On the first and general point, the *President* stated it in this light, that the reversion which was on Cairoch, was not only a power to redeem the lands, but also to call for an account of the price, and that this reversion importing both points was only adjudgable, and so his opinion would have been, albeit there had been no such adjudication as that led by Grierson; and that that adjudication affords a separate consideration, *viz.* that the whole reversion was established in Grierson.”

1758. *July 18.* ROBERT SYM *against* GEORGE THOMSON.

THIS case is reported in *Fac. Coll. (Mor. 1137.)* The following is Lord KILKERRAN'S note :—

“*July 18.*—The Lords altered, reduced the disposition, and remitted to the Ordinary to proceed accordingly.

“The Lords agreed that this case should be taken, as of an assignation made in Scotland.

“*Kaims*, the Ordinary, explained the ground of his interlocutor to have not

been the act 1696,—that did not affect foreign effects,—but the general ground of fraud, in preferring one creditor to another by collusion; but others took it upon the footing of the act 1696, as comprehending all effects, whether Scots or foreign; and though it is true that as the act cannot limit the judges, or affect the laws of another country, and therefore, that the assignation would have been sustained in England, yet it would be competent on the act 1696 to make him repeat who had drawn in virtue of it; and were there a difficulty in that, in case he had recovered the effects upon a judgment, there can be none, where, as in this case, he has recovered them on voluntary payment.”

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1758. *July 21.* CREDITORS OF AUCHENBRECK *against* LOCKWOOD.

THE circumstances of this case are stated in the *Fac. Coll.* (*Mor.* 14,129.) It was reported to the Court by Lord KILKERRAN. The following is his report:—

“I am to report a question that has occurred in the ranking of the creditors of Auchinbreck.

“In the ranking of the creditors of Auchinbreck, the interest produced for Richard Lockwood and the executors of Edward Gibbon, was a decret of adjudication on the 28th July, 1737, for the accumulate sum of L.480, 2s. 6d. Sterling, and another decret of adjudication on 17th July, 1738, for the accumulated sum of L.180 Sterling, and that is not disputed, but that those adjudications fall to be ranked *pari passu* with the adjudications produced for the other creditors.

“But it appears by the oaths of those creditors on the verity of their debts, that on the 30th March, 1739, they received, by a furthcoming on an arrestment out of certain funds belonging to the common debtor, a partial payment of L.340, 8s. 4d. Sterling.

“And the question which thence arises in the ranking is, whether these two adjudications should be ranked to the full extent of their accumulate sums, so as to draw along with the other adjudgers in proportion to that whole sum, ay and while they shall draw their full payment? Or whether the L.340, 2s. 6d. should be discounted, and the two adjudications ranked only for the remainder?

“It is said for Lockwood, *1st*, in general, that however uncouth it may at first sight appear, that an adjudger should be ranked for more than the creditor would be entitled to draw or is due, yet this seeming incongruity will fly off when it is considered that when that rule is followed which they contend for in the ranking, the adjudger does not draw one farthing more than what is justly due to him. His debt in this case must at any rate suffer a considerable defalcation, as there is not fund for paying the whole creditors, so that the question in effect comes to this, whether the other creditors shall be entitled to a share of what the adjudger received by his arrestment out of another subject, which should be the case, should the sum so received *pro tanto* restrict his adjudication, as thereby the fund of the other creditor’s payment should proportionally be enlarged.

“After saying so much in general, Mr. Lockwood proceeds to state the principles in law on which he pleads his cause.