

1781. *August 2.* Ranking of the CREDITORS of CULT.

MR WARDROBE of Cult died in 1775, possessed of an estate of about L. 300 Sterling of yearly rent. His debts, constituted chiefly by bill, for small sums, and due to country-people, amounted to L. 10,000, besides L. 1000 in name of provisions to his younger children.

His eldest son, Dr Wardrobe, who had resided for some time in the West Indies, and there purchased an estate, said to be very valuable, came home a few weeks before his death. Although, from the father's books, which were regularly kept, the situation of his funds might have been known; and although the son himself was then insolvent for a large sum, he entered into possession of his father's estate, took up the bills granted by his father, and gave his own acceptances in their stead, to the extent of L. 7000.

In 1778, the creditors proceeded to diligence against the estate of Cult; among others, one Mr Ross from the West Indies adjudged for the sum of L. 15,000 due by the son. The younger children also led adjudications.

In the ranking of the creditors, those in the renewed bills craved to be preferred, in terms of the statute 1661, c. 24. as creditors of the father.

To this Mr Ross and the younger children *objected*, That, by the creditors having given up the father's bills, and accepted of others from the son, a *novatio debiti* took place, in consequence of which they ought only to be ranked *pari passu* with the son's creditors.

It was *observed* on the Bench, That the son's conduct had been very improper, and that no benefit could arise therefrom to his own creditors, or to his father's younger children.

THE LORDS waved determining the general point, and found, from the whole circumstances of this case, that the Creditors of William Wardrobe the father, though they gave up their former securities, and renewed the bills with the son, are entitled to the benefit of the act 1661, and to be ranked as the creditors of the father.

Against this judgment the younger children *reclaimed*, when they endeavoured to remove the specialities alluded to in the interlocutor, and to distinguish their plea from that of Mr Ross, who was only a creditor to the son. But their petition was refused without answers.

For the Creditors in the renewed bills, *Honyman.*

For Mr Ross, *Henry Erskine.*

For the Younger Children, *Dickson.*

*Fol. Dic. v. 3. p. 167. Fac. Col. No 78. p. 134.*

1783. *February 15.*

ANNE MACKAY *against* The REPRESENTATIVES of COLONEL HUGH MACKAY.

ANNE MACKAY, the second wife of William Mackay, was, by their contract of marriage, entitled to certain provisions.

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No 12.

The creditors of a defunct took renewed bills from his heir. They were, notwithstanding, found preferable to the heir's creditors.

No 13.

A bond heritable, *destinatione*, was found to fall under the act 1661, c. 24.