1712. *February* 22. CREDITORS of COLQUHOUN and WARDROP, Supplicants.

No 12.
The Court will not, on account of any circumstances of conveniency, allow a sale to proceed before an inferior court.

THE estates of Colquhoun of Kenmure, and Wardrop of Dalmarnock, being bankrupt, and the ranking and sale advanced, the Creditors gave in a bill to the Lords, representing that the lands lie within two miles of Glasgow, and the Creditors concerned live all in the neighbourhood, and that it will be most convenient for all bidders that the roup be at Glasgow, before the Bailie of the regality, or any other they shall appoint to oversee it, the articles of roup being adjusted here; therefore begging the Lords would appoint it to be at Glasgow, for the ease of all parties concerned. THE LORDS considered this was the first time ever such a thing was demanded, since the act introducing the sale of bankrupts lands in 1691; and that they have been all uniformly before one of their own number, and still at Edinburgh; and whatever semblance of ease this had, at the first view, yet the yielding such a novelty might draw inconveniences with it; for by the same rule they might be craved to be held in Orkney or Inverness; and though they doubted not but on specialities they had power to appoint them at any place, and before any gentleman they should commissionate for judge, it was never yet done; and Edinburgh being the *communis patria* for all Scotsmen, the purchase was little worth if it would not bear the offerer's expenses to come to Edinburgh; and for their small conveniency such a novelty was not to be introduced. It is true apprisings of old were led at the head burgh of the shire where the lands lay, or at Edinburgh by a special dispensation; but these thirty years past all sales of bankrupt lands have always been at Edinburgh, and before one of their own number; and therefore the LORDS refused the desire of these Creditors bill.

Fol. Dic. v. 2. *p.* 311. *Fountainhall, v.* 2. *p.* 729.

1744. *February.* A. *against* B.

No 13.

IN a process of sale, it was found, that even real creditors, when not in possession, were sufficiently called by the edictal citation.

Fol. Dic. v. 4. *p.* 208. *Kilkerran,* (RANKING and SALE.) *No* 2. *p.* 469.

No 14.
A point determined in a ranking cannot be altered in making the scheme of division.

1746. *June* 24.
GARDEN of Troup *against* The other CREDITORS on the Estate of BIRKHILL.

IN the ranking of the Creditors on the estate of Birkhill, Garden of Troup, and other adjudgers in the same case with him, were preferred in their order by an interlocutor in these terms, 5th June 1744, " Prefers the adjudgers after-

named upon the lands and price thereof, in event of a sale, for payment to them of the respective sums after-mentioned, and annualrents thereof from and since the date of their adjudications during the not-payment, viz. to Alexander Garden of Troup the accumulated sum of ——— deducting from the said accumulated sum and annualrents thereof, the sum of ——— as paid at ———, as also the sum of ——— as paid at ———." And then follow the sums for which the other Creditors in like case with him are ranked. No 14.

The decreet of ranking was extracted, and in making up the scheme of division, the accountant deducted from the sum in Troup's adjudication, and annualrents thereon, the partial payments above-mentioned, and so on the calcul allotted to him a sum in proportion to the remainder of his debt; whereas he alleged he ought to have drawn in proportion to the full sum in his adjudication, with only this qualification, That if the dividend falling to him exceeded his demand still due on account of the partial payments, these ought so far to be deducted, as that he might receive no more than his debt; and this in conformity to the practice of the Court, particularly 16th February 1734, Earls of Loudon and Glasgow against Lord Ross, *voce* RIGHT in SECURITY.

THE LORD ORDINARY approved of the scheme of division. And a bill being presented, the LORDS, 26th July 1745, "Found that it was not competent to proceed in the point principally insisted on in the petition, in respect of the extracted decreet of ranking."

Pleaded in a reclaiming bill; That this question was not determined by the decreet of ranking; for that the clause therein, "deducting," &c. only imported that these partial payments should be deducted according to law and practice, and the petitioner could not understand it in any other sense, nor consequently reclaim.

2*dly*, Supposing it to bear the meaning it had been understood in by the accountant who made out the scheme of division, it would be still subject to review; for that a process of ranking and sale made but one individual action, in which, after the ranking was finished, there was no necessity of any new summons to the Creditors, as there would be if they were different processes: That the ranking determined in what order the Creditors were to draw, but not the extent of their quotas, which was the work of an accountant; and by the constant practice, any error in the scheme might be set right, and sometimes new interests had been admitted, so long as the price was still *in medio:* That in the case of the Creditors of Tofts, Susannah Belches having produced an inhibition, which was found in the ranking to cut down certain debts, but which was neglected to be objected to a bond granted after it to Kippenross; "the LORDS found, 25th February 1730, that the price of the lands being still *in medio*, there was yet place to prefer Susannah Belches's inhibition to Kippenross's heritable bond, in so far as she was thereby prejudged." And in another case, *anno* 1733, they found, that an inhibition in the person of Burnet of Monboddo was not excluded, though not produced till after the decreet

No 14. of ranking. And in the sale of the estate of Boswell of Balbarton, there was a rectification made in the scheme of division long after the extract of the decreet of ranking.

Answered, That when the proceedings before the Ordinary were looked into, it appeared plain that this was determined; nor had any mistake been made in the meaning of the interlocutor.

A process of ranking, and another of sale, might be carried on at different times and upon different summonses; and it was certain they were different processes, since by act of sederunt the decreet of ranking behoved to be extracted before the estate could be sold. This was appointed to obviate the inconveniency of purchasers who had the rents in their hands, obstructing the ranking, which intention would be frustrated, if a decreet of ranking could be opened, on a neglect of pleading therein an argument in law.

Susannah Belches's inhibition had been pleaded upon and sustained to reduce certain debts, but had been neglected to be applied to Kippenross's bond; which overright was rectified. Monboddo's inhibition was probably *noviter veniens ad notitiam*; and the petitioner had not set forth what sort of alteration it was which was made in the case of Balbarton.

THE LORDS found, that the point principally insisted on in this petition was *hactenus judicata*, and therefore adhered.

Petit. *Garden.* Resp. *Hay.* Clerk, *Gibson.*

There was no opportunity of taking into consideration the question of law determined in the Earl of Loudon's case, but several of the Lords declared they were not satisfied that decision ought to be followed.

D. Falconer, v. 1. *No* 121. *p.* 148.

No 15. The estates of two different proprietors bound conjunctly and severally for a debt allowed to be included in one summons of sale.

1747. *January* 10. ARBUTHNOT, Petitioner.

WHERE the estates of two different persons, bound conjunctly and severally for a debt, were comprehended in one adjudication, and a ranking and sale was thereon pursued of both estates in one and the same summons, the process was sustained; although, where the grounds of debt against two persons are different, and different adjudications proceeding thereon, though at the instance of the same person, a sale of the two estates could not proceed on the same summons.

For as where both proprietors are bound in the same debt, one adjudication may thereon proceed on one summons against the estates of both, there is no reason why in like manner a sale may not on such adjudication proceed against both estates, and that whether the other debts ranked on these estates affect them separately or jointly.

Fol. Dic. v. 4. *p.* 208. *Kilkerran*, (RANKING and SALE.) *No* 3. *p.* 469.