

No. 43. 1752, June 5. CREDITORS OF HAMILTON *against* BOYS, &c.

FOUND the objection to Mr Blackwood's interest not competent to the creditors of Sir George Hamilton, not being creditors of Farm, and therefore repel it, and find the disposition 1702 does not fall the act 1621, and find the pursuer in right of Farm entitled to relief.—17th January 1749.

IN this competition, *vide* 17th January 1749;—and now the creditors founded on three inhibitions prior to the disposition by Sir George Hamilton to Fleeming of Farm, in 1702, one at the instance of Allan, one at the instance of Halliburton, and a third at the instance of Dame Grizel Stewart;—to which sundry objections were made, which were all repelled this day;—as first, that though Allan and Haliburton's were executed on the same day, that Allan's was at the debtor's dwelling, the same as if he was in the country, and Halliburton's at the market cross of Edinburgh, and pier and shore of Leith, as out of the country, which it was said could not both be true; which the Lords repelled, reserving to Mr Blackwood to disprove either of these executions, either Allan's, by proving that Sir George Hamilton was then out of the country, or Halliburton's, by proving that he was in the country, as he Mr Blackwood shall be advised. *2dly*, Repelled the objection, that the executions of some of the petitioners did not recite the debt on which the inhibition proceeded; nor the date of the letters. *3tio*, That Halliburton's and Dame Grizel Stewart's inhibitions are executed against the lieges only at the market cross of Edinburgh, and not at the pier and shore of Leith. *4to*, That the execution of all bear only, that a copy of the letters were left for the party, but not that a copy of the execution was left. *5to*, The negative prescription of all of them, in respect of various answers—that it could not commence till made public by infestment in 1706,—and in 1735 the creditors were, by an extracted decret of ranking, preferred to Blackwood, in which these inhibitions were preferred; and the lands thereon sold; and they continued preferred till this process raised in 1744, and till the interlocutor January 1744, reponing Blackwood *in statu quo* to be heard on Farm's infestment 1706, as *noviter veniens ad notitiam*. *2dly*, Found that Thomas Boys had duly adjudged the annualrent right on Dudhope from Sir Archibald Fleming of Farm, as well as from Sir George Hamilton, and sustained the objections proponed for him against Mr Blackwood's adjudication against Sir William Fleeming of Farm, as apparent-heir of Sir Archibald the debtor,—that the same proceeded on a special charge to enter heir, and that neither this right of annualrent, nor no other lands or subjects, are contained in the letters of special charge;—and found the said adjudication and infestments void and null;—and also sustained the separate objection to Mr Blackwood's infestment, that the Crown, by whom it was granted, was not superior, and that sasine was not taken on the ground of the lands of Dudhope;—and found, that Mr Blackwood, on recovering payment of it of Sir Robert Fleeming's estate, already affected or that shall be affected by Thomas Boys, or Douglas of Garval, is bound to make over to them such collateral securities as Sir Robert Blackwood, his father, got from Sir George Hamilton for his security or payment. But as the bond of corroboration by Sir George and Sir Archibald Fleeming did not bear that Sir Archibald was only cautioner, and contained no clause of relief, therefore repelled the objection on the act 1695 anent principals and cautioners;—and repelled the objection to the conveyances by Sir Robert Milne to Sir George Hamilton 1697, that they were in *fraudem creditorum*, both as too late, and for many other reasons.