points, and found that the petitioner could not have allowance of the expense of the erroneous infeftment; 2dly, That for the expense of the adjudication he could only be preferred on the superiority, but from this last I own I differed; 3dly, That he could not be preferred for his proportion of the expense of the ranking and sale. Arniston was much against this last.

No. 10. 1743, Jan. 5. BANK OF SCOTLAND *against* FRASERDALE.

(The competition between these parties took place in the ranking of Prestonhall, relative to which see the note immediately above.)

No. 11. 1743, July 12. RANKING OF THE CREDITORS OF PORTRACT.

A creditor being infeft for principal annualrent penalty and termly failzies, the question was reported, whether in a ranking this creditor should be preferred for his penalty or termly failzies in so far only as extended to the expenses of completing his right, according to our judgment in the case of Prestonhall, or if he should be preferred also for the expenses of ranking and sale; and we gave the same judgment as in the case of Prestonhall, viz. to prefer him only for the expense of completing his title.

No. 13. 1748, Jan. 29. COMPETITION OF THE CREDITORS OF BLAIR.

THIS estate being sold at the instance of the apparent-heir on the act 1695, one creditor had adjudged before the sale on a *cognitionis causa*, and two creditors adjudged after but within year and day of the first, and other creditors did not at all adjudge. The question was,—In the division, whether the three adjudgers should be preferred *pari passu*, being within year and day, or if the first ought not to be preferred, and the two adjudications after the sale were not inept?—or if the whole ought not to be preferred *pari passu* whether adjudgers or not, because the sale which is an adjudication was for their behoof? And we found that the whole creditors whether adjudgers or not ought to be preferred *pari passu*.

No. 14. 1748, July 1. BLACKWOOD *against* EARL OF SUTHERLAND.

A decreet of ranking and sale of the estate of Dudhope being quarrelled at Mr Blackwood's instance to the end that he might be restored to his due place in the ranking and be preferred in an annualrent of L.11,000 that formerly belonged to Sir George Hamilton affecting that estate, and to which he had right by disposition 1702 and infeftment thereon in 1706 in the person of Sir Andrew Fleming of Farm, from whom he had adjudged; whereas in the decreet the Earl of Sutherland and others are preferred to him on a disposition by Sir George in 1699, though no infeftment followed till 1709, so three years after his, because he had not then produced Farm's sasine, but which he has since discovered and now produces. The first ground of reduction was, that Janet Hepburn, in whose name these processes were carried on was dead several years before it was raised. Defences were, that in rankings and sales the pursuers are often but nominal, without any

effectual interest, as is often the case of processes of multiplepoinding; and in this case the competition betwixt Mr Blackwood and these defenders depended four years, wherein he forced them to prove the tenor of their sasine 1709, which therefore ought not to be annulled because of a mistake in the name of the pursuer, whose interest was found entitled to draw nothing; 2dly, Even this objection is competent and omitted by Mr Blackwood; 3dly, The regulations 1695 art. 18. provide that nullities in decreets *in foro* shall operate no further than to redress the party's prejudice by the nullity. The Lords sustained the objection and found the decreet void and null, and would not confine it, as Mr Blackwood proposed, to restoring him against it but to subsist as to the rest. But 3d January 1749, we altered, and sustained the decreet, but allowed Mr Blackwood to be heard on his infeftment notwithstanding its being omitted in the former process.

No. 15. 1748, July 28. SALE OF RUTHERFORD'S ESTATE.

UPON my report without informations for advice, the Lords found that the pursuer might pursue a sale on the act 1695 notwithstanding he is served heir in general *cum beneficio inventarii.*

No. 16. 1749, June 17. CREDITORS OF CROWDIEKNOWS.

IN the division of the price, from William Maxwell being creditor in a great sum by an heritable bond and infeftment for security of his penalty as well as his principal sum, and accordingly preferred in the decreet of ranking for his penalty to be restricted to his necessary expenses, the accountant stated a doubt which at the desire of the lawyers I reported this day for advice: Whether he should draw his penalty so as to relieve him of his share of the expense of ranking and sale? And the Lords found, agreeably to the act of sederunt and former practice, that he could not, but behoved to defray the expenses himself. *Vide* the cases of Prestonhall, Fraserdale, and Portract. (*supra.*)

No. 17. 1750, Jan. 6. SALE OF THE ESTATE OF ARKLAND.

A pursuer of a sale dying after decreet of ranking, and just before they were proceeding to the roup, the Lords on the act 1711 granted warrant to another creditor Bailie Montgomery to carry on the sale; and found no necessity of calling the last pursuer's heir; which last appeared to me odd, since if any other creditor had died, the sale by that act must have stopt till his heir had been called; and it was thought that had he died during the ranking even his heir must have been called. At common law on the death of any party once admitted into a process, it must stop till his heir be called;—and that act makes no distinction at what period of the process he dies.

No. 18. 1750, Feb. 2. CREDITORS OF SIR ALEXANDER HOPE, *Competing.*

See Note of No. 12, *voce* INHIBITION.