

1698. December 23.

Mr THOMAS LEARMONT Advocate *against* LORD ARNISTON, and other CREDITORS
of Sir ROBERT PRESTON of that ilk.

No 45.

In a reduction
of an ex acted
decree of
ranking,
found, that
the pursuer
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duce it.

I REPORTED Mr Thomas Learmont advocate, against the Lord Arniston, and other Creditors of Sir Robert Preston of that ilk. There being a decret ranking these creditors extracted, Mr Thomas complains, that some are preferred to him, who ought, in law, to have been postponed, and raises a reduction of that decret, and craves they may take a day to produce. It was *contended* for Arniston and the rest, That they were not obliged, because all parties having interest were not called, viz. sundry of the creditors they condescended on; *2do*, *Quoad* the decret of ranking *in foro*, they were not obliged to take a day to produce it; because, being *in publica custodia*, they giving him its date, the pursuer was bound to extract it himself; *3tio*, They needed not produce the grounds and warrants; for if the decret stood valid, then he had no access to quarrel its grounds; and if the decret should be opened, then they were content to produce also the ground of their debts. *Answered* for Mr Learmont pursuer, to the *1st*, He needs call no creditors, but those whose preference he quarrels and contraverts, seeing he yields *quoad* the rest; to the *2d*, The decret was extracted on the common expense, and so is all their evidents; but however he is willing to extract such a particle of it as concerns his preference allenarly, conform to the 17th section of the regulations 1695; and to put him to the vast expense of extracting the whole, were a great severity; to the *3d*, They must produce the grounds, else he will insist on that reason, that the decret wanteth warrants. *Replied*, If the order of the ranking be once inverted, then the whole creditors must be cited; and *quoad* the *2d*, The regulations do not concern this case of satisfying productions in reductions and improbations, but only where parties extract for their security, or to obtain payment; and the decret is a syllogism where the premisses cannot be omitted, and if any thing be left out, it is like the pulling out an arrow from a bundle, which looses the whole; to the *3d*, The decret is a *medius obex* and barrier, till which be removed you cannot quarrel the grounds of the debts. THE LORDS found the other creditors must be also cited, but allowed him a diligence to call them *cum processu*; and found he behoved to extract the whole decret, and that the regulations did not concern this case, and that the defenders behoved to take a day for producing not only the grounds and warrants of the decret, such as the summons, executions, acts, &c. but also the grounds and instructions of their several debts.

Fol. Dic. v. 2. p. 326. Fountainhall, v. 2. p. 28.