

## S E C T. XXV.

## Citation in Process of Ranking and Sale.

No 117. 1727. *June 28.* EARL MARCHMONT *against* EARL HOME.

IN a process of sale at the instance of a creditor, of his debtor's estate upon the head of bankruptcy, the LORDS found no process, in respect there was no edictal citation, nor any warrant in the summons for such citation, as the act of sederunt, 23d November 1711, directs. Here it was *pleaded*, What the act of sederunt enjoins, is not of necessity but of expediency, which the raiser of the sale may prosecute or not as he thinks fit; and that, if all the real and personal creditors be cited personally, or at their dwelling-houses, in the common course of diligence, the edictal citation is superfluous.

*Fol. Dic. v. 1. p. 142.*

No 118. 1750. *January 6.* ROBERT MONTGOMERY *against* The CREDITORS of MAXWELL of Arkland.

JOHN NEILSON of Corsack pursued a ranking and sale of the estate of Arkland, which proceeded so far as that the lands were put up to roup, when it was represented the pursuer was dead; and thereupon the sale was adjourned. Robert Montgomery another creditor, petitioned for warrant to carry it on, and proceed to roup; to which it was objected, on the Bench, it was necessary the deceased creditor's representatives should be called. *Answered*, by others of the Lords, the ranking was over, so there could be no further litigiousity.

THE LORDS granted warrant.

*Fol. Dic. v. 3. p. 122. D. Falconer, No 117. p. 133.*

*See RANKING and SALE.*