

No 5. the ranking falling within the price, all must bear their share of the common expense.

THE LORDS found, that the common expense did affect the whole creditors in their ranking equally and proportionally, according to the shares they draw of the price.

*Fol. Dic. v. 1. p. 286. Rem. Dec. v. 1. No 13. p. 26.*

1727: July. CREDITORS OF ABBOTSHALL, Competing.

No 6.  
Expenses in a ranking proportioned among the whole creditors. How this is done, where there are liferenters.

UPON a bankrupt estate, there were three classes of creditors, *imo*, The preferable creditors, who were instantly to draw their whole debts out of the price; *2do*, the creditors in annuities for life, who were to draw yearly the annualrents of a part of the price left for that end in the purchaser's hands; *3tio*, the other creditors, who, upon termination of the liferents, were to draw the principal sum. It was *contended*, with regard to the expenses of the ranking and sale, That the method of proportioning the same, founded in the act of sederunt, and followed in practice, is, that the whole expense be paid by the purchaser in the first place, a proportion whereof to be detained from the preferable creditors drawing their payments; and as to the remainder, the interest to be deducted yearly from the liferenters, and the principal from the creditors when the liferent is run out. Notwithstanding of which, the LORDS ordained the expenses of the ranking and sale to be proportioned on the whole creditors who are now, and at the event of the liferenter's death, to draw the price; and that a deduction be made accordingly. And, further, in regard there could be no retention till that time, off the creditors who only draw their payment at the death of the liferenters, therefore ordained the proportional expense which falls to their share, *pro loco et tempore*, to be also further proportioned on these creditors who now draw payment; and ordained the same to be retained accordingly: And ordained the purchaser to repay them the said sums, without annualrent, at the first term of Whitsunday or Martinmas after the death of the liferenters, and to detain the same from the creditors entitled to draw the price liferented. See APPENDIX.

*Fol. Dic. v. 1. p. 286.*

No 7. 1738. February 3. NICOLSON against HIS FATHER'S CREDITORS.

IN a sale carried on by an apparent heir, if there be no reversion, the expense must be proportioned among the creditors in terms of the act of sederunt 1711, being in that case in *rem versum* of the creditors, and not of the heir. See APPENDIX.

*Fol. Dic. v. 1. p. 286.*