

No 14.

of ranking. And in the sale of the estate of Boswell of Balbarton, there was a rectification made in the scheme of division long after the extract of the decret of ranking.

*Answered*, That when the proceedings before the Ordinary were looked into, it appeared plain that this was determined; nor had any mistake been made in the meaning of the interlocutor.

A process of ranking, and another of sale, might be carried on at different times and upon different summonses; and it was certain they were different processes, since by act of sederunt the decret of ranking behoved to be extracted before the estate could be sold. This was appointed to obviate the inconveniency of purchasers who had the rents in their hands, obstructing the ranking, which intention would be frustrated, if a decret of ranking could be opened, on a neglect of pleading therein an argument in law.

Susannah Belches's inhibition had been pleaded upon and sustained to reduce certain debts, but had been neglected to be applied to Kippenross's bond; which overright was rectified. Monboddo's inhibition was probably *noviter veniens ad notitiam*; and the petitioner had not set forth what sort of alteration it was which was made in the case of Balbarton.

THE LORDS found, that the point principally insisted on in this petition was *hactenus judicata*, and therefore adhered.

Petit. Garden.

Resp. Hay.

Clerk, Gibson.

There was no opportunity of taking into consideration the question of law determined in the Earl of Loudon's case, but several of the Lords declared they were not satisfied that decision ought to be followed.

*D. Falconer, v. I. No 121. p. 148.*

No 15.

The estates of two different proprietors bound conjunctly and severally for a debt allowed to be included in one summons of sale.

1747. January 10.

ARBUTHNOT, Petitioner.

WHERE the estates of two different persons, bound conjunctly and severally for a debt, were comprehended in one adjudication, and a ranking and sale was thereon pursued of both estates in one and the same summons, the process was sustained; although, where the grounds of debt against two persons are different, and different adjudications proceeding thereon, though at the instance of the same person, a sale of the two estates could not proceed on the same summons.

For as where both proprietors are bound in the same debt, one adjudication may thereon proceed on one summons against the estates of both, there is no reason why in like manner a sale may not on such adjudication proceed against both estates, and that whether the other debts ranked on these estates affect them separately or jointly.

*Fol. Dic. v. 4. p. 208. Kilkerran, (RANKING and SALE.) No 3. p. 469.*