1760. *January* 4. GRAHAM *against* RIGBIE.

In this case it was the opinion of the Court, that a decreet-arbitral, pronounced in England, might be set aside in Scotland upon iniquity, according to the law of the country where it was pronounced. And in this case they accordingly reduced a decreet-arbitral upon that ground.

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1760. *January* 8. COUNT LESLIE *against* LESLIE GRANT.

In this case, the Lords determined that a man who was agent in a cause cannot be called by the other party as a witness, to declare upon oath such things as he learned in the course of that employment, without distinction whether they were told him by his client, as secrets of the cause, or not; for the Lords were of opinion that every thing he was informed of as agent, belonged to the secrets of the cause, and, therefore, he was not obliged to reveal it; and the same decision will, no doubt, apply to a lawyer or any other man employed in law business, in the way of his profession.

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1760. *January* 22. DAVID MONRO *against* ———.

In this case it was the opinion of the President and the majority of the Court, that an adjudication against one only of more heirs-portioners, was absolutely void and null; *dissent.* Coalston, who thought that the adjudication was good against one of the heirs-portioners, so far as her share went.

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1760. *February* 20. CREDITORS of HAMILTON of GRANGE.

[Kaimes, No. 160.]

This question occurred upon the Act 1695, introducing the sale of estates by apparent heirs, an act of very great importance in our law, but upon which there has been very little practice, and very few decisions. The case here was, that an apparent heir, three years after his predecessor's death, raised a summons of sale, and actually brought the estate to a sale; after which, his creditors laid on an arrestment of the price in the hands of the purchaser: this brought on a competition betwixt these creditors and the creditors of the defunct, who alleged that they were preferable upon the price, and that the creditors of

the heir could only take what belonged to him, that is, what remained after payment of the creditors of the defunct.

The Lord President said, that he understood that this part of the Act 1695, though consisting only of two or three lines, altered our whole law as to sales, and as to the preference of the creditors of the defunct and the heir; that he understood that whenever an heir raised a summons of sale upon this act, he could not be molested at the instance of either his own or the defunct's creditors, but was entitled to carry on the sale as trustee, and for behoof of the creditors of the defunct only, to whom alone the price belonged, so far as their debts extended.

Lord Kaimes said, that, till the Act 1621, the creditors of apparent heirs could not have at all affected the defunct's estate,—but by that act this was altered, and there was a method laid down by which they might affect the estate, viz. by a charge against the heir to enter, and an adjudication upon that charge; that, before the estate was sold, the creditors, in this case, might have used that method, (in which he differed from the Lord President, who thought it was not competent after the summons;) but after the sale there could be neither charge nor adjudication, and these creditors were in the same case as they were before the Act 1621.

Lord Alemore was of a different opinion, and said, that, by the Act 1621, the creditors of the apparent heir were upon the same footing as the creditors of the defunct, and continued so down to the year 1661, when the creditors of the defunct got a privilege within the three years; and, after the three years were expired, they were in the same case as the creditors of the apparent heir, only preferable according to their diligence. In this case, therefore, they might have affected the estate with diligence before the sale; and now, after the sale, they may affect the price, which has come in place of the land, by arrestment.

It was carried in favour of the creditors of the defunct. *Dissent.* Alemore, Coalston, Prestongrange.

*22d July* 1760.—This interlocutor adhered to, upon this principle, that by common law the creditors of the heir cannot at all compete with the creditors of the defunct, nor any way affect his estate, unless the heir enter; and by statute there is only one way in which they can affect it, viz. by a charge to enter heir, which, if they neglect, the law gives them no other remedy. But the answer to this is, that after the three years by our law, and after five years by the Roman law, the estate of the heir and the estate of the defunct is considered as one, and both lie open to be affected equally by the diligence of either set of creditors; and if the creditors of the heir could have affected the estate by the adjudication before the sale, there is no reason why they should not affect the price by arrestment of the sale, or why the heir should have it in his power, by an act of his, to cut his own creditors altogether out. If there had been no creditors of the defunct in this case to compete, it could not be denied but that the creditors of the heir could have affected the price by arrestment; which shows very plainly that the creditors of the heir can affect the predecessor's estate otherwise than by adjudication; and after the three years are expired the creditors of the defunct cannot hinder them.