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1579 the subscription of the party was in all appearance reckoned of itself a sufficient security against forgery, without any other check. Therefore neither the words, nor spirit of this statute, comprehend those who are witnesses to the subscription of the party himself."

In this case the general question of the effect of a decree of sale obtained by a purchaser, at a judicial sale, against the right of a person not called in the sale, was debated, and decided to be ineffectual as a bar to that person's right.

This part of the case is founded on by Erskine, B. II. tit. 12, § 63.—Adopted by Professor Bell, 2 *Comm.* p. 321, and recognised in the case of Middlemore, 5th March 1811, *Fac. Coll.*

[M. 7873.]

JAMES MURRAY, Esq., Receiver-General of the Customs in Scotland, and his MAJESTY'S ADVOCATE,	} <i>Appellants.</i>
ANDREW THOMSON and OTHERS, Creditors and Adjudgers, - - -	
	} <i>Respondents.</i>

House of Lords, 24th February 1755.

CROWN'S PREROGATIVE.—Crown has no preference for revenue debt over real estate—its preference only extends over moveable estate in Scotland.

No. 109. JOHN BURNET was owing His Majesty's Customs L.2616, being the duties on tobacco imported by him. A writ of extent was issued and certain sums recovered against his personal estate, by which the debt was reduced to L.1578, 13s. 5d. sterling. For this debt the Crown adjudged his real estate, and was infert; and within a year and day of that adjudication, the respondents, also creditors of Burnet, adjudged in like manner his real estate. The question was, whether the Crown had a preferable right over the real estate to the other adjudging creditors.

The adjudging creditors, subsequent to that of the Crown, maintained, that the Crown had no prefer-

ence by law over other creditors in real estate, but only over the moveable estate; and that by virtue of the Act 1661, all appraisings within a year and day of the first effectual apprising, were entitled to rank *pari passu*. To which it was answered, that by the prerogative of the Crown, as established by law, the King's interest was preferable to all other creditors.

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The Lords, on report of the Lord Ordinary of this date, pronounced this interlocutor:—“ Find that before the union of the kingdoms of England and Scotland, the king, by the laws of Scotland, was entitled to no preference for revenue debts upon the real land estates of his subjects, but according to his diligence; and find, that by the Act 6 Anne, the laws of Scotland, as to real estate, are saved, and declared to hold place and be observed; and therefore, find his Majesty preferable only *pari passu* with the adjudgers within year and day of his adjudication, and prefer him and them *pari passu* accordingly.”

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The Crown reclaimed, but the Court adhered.

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Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellant:—By the law of Scotland the king is always preferable for his debt over other creditors, especially in a revenue debt falling under the customs and excise. This preference is not confined to any particular estate, but extends over all. Nor is the Crown's preference taken away by the 6 Anne, which provides—“ That no debt or duty from any of the debtors or accountants to the Crown in Scotland, shall affect or subject any real estate in Scotland of any such debtors or accountant, to the payment or satisfaction of any such debt or duty, further or otherwise, or

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“ in any other manner and form, than such real estate may, or ought to be subject, or liable thereto, by the law of Scotland.” This clause does not cut off the Crown’s preference for revenue debt over real estate in Scotland. It provides that the king’s prerogative is to extend no further than it may or ought to be extended by the law of Scotland; but as the law of Scotland cannot limit the king’s prerogative, his preference attaches on real estate as well as personal.

Pleaded for the Respondent:—By the Act 1661, all creditors obtaining decrees of adjudication within a year and day of the first effectual one, are entitled to be ranked *pari passu*. This is a statutory regulation, and the Articles of Union, and the Act 6 Anne establishing the Court of Exchequer in Scotland, made no alteration of this law, or any exception to it in favour of revenue debts due to the Crown. On the contrary, in so far as real estate was concerned, and upon a sound construction of these acts, there is the strongest evidence for supposing that real estate was excepted. The Crown has a preference over the moveable estate before all other creditors, but can have none except through force of diligence on the real estate.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For Appellants, *W. Murray, Ro. Dundas, Rich. Lloyd.*

For Respondents, *A. Hume Campbell, S. Fraser.*

Elchies’ Notes, p. 16. “ We all gave our opinions separatim on this important question, and unanimously found that Murray could only be preferred *pari passu*, and agreed that a contrary law would make a terrible convulsion in our land rights.”