

take up the proofs where it left and carry it on to a final issue for the  
 Common benefit of the whole Creditors d. act of 1694. The process  
 the death of the Debtor or any of the Creditors Dependents (comparing all  
 ducing do the Not stop till the Expiring of the Year of Deliberation, unless  
 till the Apparent be filed, with the necessity of transcribing the process  
 Live; and if no person appear in place of the Deceased, the Lords will  
 proceed in the proofs where it left and it is the same in such circumstances  
 par lies alive compare Not d. act of 1694. § 5.

When proof in the fact is concluded and Divorcium made thereon  
 upon a bill to the Lords a day is appointed to advise it, and a writ  
 made to the ordinary or Curator to prepare a State of the  
 Debtor's State, and a separate Scheme on a paper of part partition  
 Proof briefly being approved, and granted by the said ordinary  
 Called at the appointed day, or by the creditors hand that day.

The Creditors being Ranked, and the Common Debtor found to  
 bankrupt, the Lords decree the estate to be exposed to sale by a  
 roup, on a precise day, at such an hour, within the Session house  
 such a time as the Lords; and approval too of their own personal  
 either of them to exercise the Roup, with power to adjourn the  
 as it is thought convenient, and to prefer the highest offerer. It  
 is the usual practice to roup the whole land belonging to the Debtor  
 the purchaser may have a special roup, in regard the act of Par-  
 titionment Act 17 Par. 3 Ch. 2 allows to sell the Land and Estate  
 any part thereof 23 Feb. 1692. Creditors of Cromarty Comyn  
 The Lords direct also letters of publication to be issued out in  
 the signal (which are signed by one of the principal Clerks) for  
 intimation of the Land and others to be exposed to sale, the time  
 price, the time and place of the roup, to the real Creditors in  
 Scotland, and at the Market Cross of Edinburgh, Perth and  
 of Leith upon 60 days if for the thereof; and against all other  
 Sons Concerned, at the Market Cross of the three Shewburgh or Geddis  
 and at the doors of the parish Church where the Land lies, and at  
 other adjacent parish Churches named by the Lords on Sunday at  
 Dissolving of the congregation, after the forenoon's sermon, and at  
 Market Cross of Edinburgh, and Perth of Leith upon 60 days. Copy  
 of which Letters of Intimation, are to be affixed on all the places  
 a fore said act 17 Par. 3 Ch. 2. Letters of Intimation were ordained  
 be Renewed both as to Lands belonging to the Bankrupt and  
 fourth thereof, and as to a riot parish Church of the Land Lybelle  
 one of those named by the Lords Not being a parish Church.

1692 Kinloch contra Scol of Bonning town Stair lib. 4 tit. 5

§ 7. Because the Lords could not come ex certa Scientia, but upon the  
 Kings suggestion. In the mean time, the Debtor can sell his estate and pay  
 all his Debt, the roup falls, Stair lib.

At the time appointed for the roup, a Mace calls at the outer door  
 of the Session house, the Common Debtor and all his Creditors. At his return  
 the Clerk reads a part of the act and letters and the Executions of pub-  
 lication. And before the sale proceeds, it must be intimated the Order  
 of Ranking is Extracted Act of Regis 1695 art. 26. Then the Conditions  
 of the Roup are Contested. Viz. 1<sup>o</sup> that the highest offerer at the out rousing  
 of an hour shall be preferred. 2<sup>o</sup> that none offer below the secret price,  
 and that each offerer give a quarter of a year's purchase or thereabouts more  
 than what last bid. 3<sup>o</sup> that the person preferred shall be bound to exact  
 himself for the price offered, under the pain of a fifth part of the price  
 and caution within a fortnight thereafter for payment of the price to the  
 Creditors as ranked at the term of next year the like condition of that  
 the purchaser have right to sell a year, but he may be in arrears  
 from such a term, and may not a year after his entry. 4<sup>o</sup> that  
 the highest bidder failing to sign and give caution, shall be per-  
 nally, and the said offerer preferred, when the said day is out, the two  
 highest offerers bear their part, but in case the highest offerer  
 or fail to give caution for the price the next offerer shall be preferred. The  
 Roup being renewed to the said ordinary in presence of the said ordinary  
 and pronounce their deed of sale and assignation to the pur-  
 chaser for the price. Upon which Decree of Intimation as well as upon  
 other adjudications act 20 Feb. 2 Par. 4. Ch. 2. but this is an excep-  
 tion without Reception, and an order to sales by Decree and report of Masters in charge.

An Inventory of the Instructions of all the said real Purchasers  
 subscribed by the ordinary to the Lords and the Creditors, should be delivered  
 to the buyer; and Copies thereof signed by him and the ordinary  
 should be given to the Creditors: that in case of objection upon production  
 of that Inventory and the writes therein by the Buyer, each Creditor  
 might be liable to warrant him in so far as concerns the sum he  
 received by the Creditor. July 1692 Dundas of Harroston  
 Stair lib. 4 tit. 51 § 14. If any person Lawfully summoned hath  
 suffered the Decree of Ranking to go out, without producing and  
 complying upon his Interest; the Decree of sale shall not be left  
 stand good, and the purchaser be bound to pay conform thereto: and  
 the person in default shall have no other Remedy, but to pursue  
 the Receivers of the price and their heirs for Repetition 23 Novemb.  
 1711 Act of 1694. § 6. Creditors whose rights are preferable as to  
 the price of the Land roused, cannot crave the expenses of the rous  
 to be paid: the price to the prejudice of Co-creditors, but the said  
 Expence