PUBLIC BURDEN.

1773. *January* 23. BRUCE of KINROSS *against* HIS VASSALS.

IN a case, Bruce of Kinross *contra* Greig and Others, his vassals; "The Lords found, that the vassals had no claim of relief for any part of the expense laid out by them, in either building or repairing the church, manse, and office-houses belonging to the parish of Kinross." As to Greig, in his feu-charter, the superior was bound to relieve him of all cess, public burdens, minister's stipend, and schoolmaster's fees, payable forth of the lands, in all time coming."

The charters of the other vassals bore the prestations in them to be, for all burden, &c. exigible by the superior, or by any other person, and for whatsoever occasion.

Affirmed in the House of Lords, 24th November 1775.

RANKING AND SALE.

1776. *March* . The CREDITORS of BELSHIER *against* His APPARENT HEIR.

THE Creditors of Belshier of Grange raised a sale of his estate, on the Acts 1681 and 1690: his apparent heir did the same on the Act 1695. The summonses were raised, executed, called, and enrolled on the same day. It was needless to proceed in both: the question came, Which was to be preferred?

The Lords, on report of Lord Kennet, "allowed the apparent heir's process to proceed, preferably to the process at the instance of the creditors."

The Lords thought the case of the apparent heir, and the privilege given him by statute, favourable, especially if there was a prospect of any reversion. They thought it a more advantageous and expeditious way to sell the estate first, and then to rank, which is the form in sales at the instance of apparent heirs, than to rank first, and then to sell, as in the case of sales by creditors: and one of the Lords wished that the form was made the same in both cases. Neither did it seem to weigh with their Lordships, that, in this case, in some of the constitutions the heir had renounced: He thought, that an heir renouncing to one creditor did not oblige him to renounce to all. And, at any rate, that his renouncing in processes of constitution did not divest him of the character of apparent heir, nor of this privilege among others. See Erskine, *B.* 3. *tit.* 8, § 57.

There did not appear to have been any decision on the point, *viz.* of a sale at the instance of an apparent heir after he had renounced. But it was said, this proceeded from the plea's not being tenable, otherways the objection must have been made, and repelled, long ago.

1776. *March* . MITCHELL of BALDRIDGE, Petitioner.

THERE is only one messenger in Zetland: the Lords therefore, to save time and expense, granted warrant to the sheriff-officers of the stewartry of Orkney and Zetland to execute the letters of publication of the sale of the estate Girlstor, lying in Zetland, in place of messengers-at-arms. See *New Coll.*, No. .

1776. *November* 27. ALEXANDER KEITH, Writer to the Signet, Petitioner.

IN the ranking and sale of the estate of Treuchie; after the ranking was concluded, the sale advertised, letters of publication raised and executed,—the common debtor died, leaving an only sister, his heir of line, in minority. The pursuer of the sale petitioned the Court for letters of diligence, to cite the heir personally, or at her dwelling-place, and her tutors and curators, edictally, to be present at the sale, for their interest. Which the Lords granted.

1777. *January* 17. WALSH *against* The CREDITORS of MR ROBERT MACINTOSH.

JOHN Walsh, Esq., having obtained decreet of constitution against Mr Robert M'Intosh, advocate, and also decreet of adjudication against his estate for £30,000, and having obtained charter from the Crown and being infeft, brought a ranking of his creditors,—a sale of his estate in common form; in which process, having obtained and extracted a decreet of certification, in terms of the Act of Sederunt 1756, it was objected, even against himself, that, by this decreet of certification, his own debts were cut off; the fact being, that although his charter and sasine were produced before pronouncing or extracting the decreet of certification, yet his constitution and adjudication were not produced till after, and therefore they fell under the certification; for, although the decreet of certification was obtained in his name, yet it was truly for behoof of all the creditors, and, in terms of the Act of Sederunt 1756, had the same effect as if obtained by each of them.

The Lords repelled the objection.