

S E C T. IV.

Form and steps of the process. Real creditors not in possession, how to be called? Creditors to bring a sale, must be in possession of the estate.

No 10.

Form and steps of procedure.

1696. *June 4.*ALLAN *against* BELCHES.

ANDREW WAUCHOP of Niddry, and other Creditors of Mr Alexander Robertson, pursuing a roup of his lands, and the Lords appointed for seeing the same being absent on the day prefixed, the one not in town, and the other confined by the gout, the diet, by warrant of the said Lord, was continued to a farther day. This being objected as a nullity, the LORDS found his personal presence sufficiently supplied, by the warrant given by him to the Clerk, to adjourn the Court to a new day, and therefore allowed the roup to proceed at that time. But in the roup pursued by David Allan against John Belches of that ilk, the LORDS found, where the parties had neglected to give the Lords Overseers of the roup timeous advertisement of the diet, so that they were both absent, though the Clerk had continued the Court to a short day, that this adjournment had no warrant, and therefore they behoved, either upon the old or a new diligence, to cite the Creditors over again, and use the other solemnities of the market-cross, and parish church doors: for albeit this protracted the affair, and put them to a greater expense, yet being the foundation of the bidder's security, they behoved to be orderly done, and an adjournment without the Judge's express warrant could not supply it; though in ordinary processes, the diets are not peremptory, but with continuation of days, and summonses are called by the Clerk alone, in order to seeing or continuing, without the Judge's presence.

Fol. Dic. v. 2. p. 311. Fountainhall, v. 1. p. 718.

1709. *July 7.*

WILLIAM HAMILTON of Wishaw and other CREDITORS of CLELAND, Supplicants.

No 11.
The price set by the Lords on lands exposed to sale, lowered an year's purchase, on application

UPON a bill given in by the Creditors of Cleland, representing, That in the process of sale of that estate, albeit many diets had been kept for the roup, yet no offerer had appeared, or was like to appear, who would go to the enghth of nineteen years purchase, which was the price put upon it by the Lords; and