

(RANKING OF ADJUDGERS AND APPRISERS.)

tion of his decret of adjudication, should not be preferred to those who either have not adjudged at all, or have taken this measure posterior to him.

No 42.

The penal effects of a decret of certification, in cases of this sort, are confined solely to those rights affecting the estate under sale, which existed, and could have been produced when it was pronounced; and no benefit can be derived from thence by creditors who have not been preferred in the ranking. Hence the preference of those rights which have been acquired after the decret was pronounced, and of those creditors who have no real lien over the estate, must be the same as if it had never taken place. Indeed, were the Lord Ordinary's interlocutor well founded, as a decret of certification may be obtained in a period far short of a year, it would be in the power of an adjudging creditor to exclude the operation of the statute 1661.

This petition was refused, without answers.

Lord Ordinary, *Elliock*.

For Robert Craig, *Cha. Hay*.

Fol. Dic. v. 3. p. 14. Fac. Col. No. 83. p. 130.

Craigie.

* * * This decision afterwards accounted erroneous. See No 43. immediately following.

1796. May 19.

The REPRESENTATIVES of John Dunn, *against* PETER JOHNSTON, and others.

PETER JOHNSTON brought a ranking and sale of the estate of William Colhoun, in which decree of certification was pronounced, 29th February, 1792.

A personal creditor, who had produced his grounds of debt before that period, having afterwards raised a process of adjudication, Peter Johnston, and all the creditors who had produced grounds of debt, except John Dunn and another, were conjoined in the decree, which was pronounced 8th June 1792.

The decree of certification was not extracted till 31st May, 1794; and it was in the extract that the adjudication was first mentioned, as being produced as an interest.

The common agent having afterwards, in the order of ranking, proposed that Dunn should be postponed to the creditors interested in the adjudication, his representatives *objected*, That it was struck at by the decree of certification; and

Pleaded: By the summons of sale, 'The whole grounds of debt, rights, and 'diligences,' affecting the estate, are called for; and, after decree of certification is pronounced, and the ten days allowed by it are elapsed, no production of any sort can be made without an application to the Court, to have the certification recalled; 25th January 1783, Craig against the Creditors of Riccartonholm(*supra*);

VOL. I.

M m

No 43.

A decree of certification does not bar a creditor from obtaining a preference, upon an adjudication afterwards led, on grounds of debt produced before the decree was pronounced.

(RANKING of ADJUDGERS and APPRISERS.)

No 43.

and that application will not be listened to, where its object is to allow the creditor who makes it to get a preference. As no application, however, was made for recalling the certification in this case; and as the adjudication was not produced, as an interest, for so long a period after it was obtained, the objectors were led to believe that its sole object was to enable the creditors to draw their dividends; and, on the faith of this, they have lost the opportunity of adjudging, so as to come in *pari passu*.

Answered: It is not thought necessary, in practice, to apply for having a decree of certification recalled, in order to authorise a production, where the decree has not been extracted. Besides, the adjudication was not struck at by the certification, which, in terms of the act of federunt, 17th January 1756, is directed solely against grounds of debt existing, and not produced, at its date, and does not prevent creditors from afterwards acquiring preferences by diligence; 22d November 1785, Grierson against Douglas, Heron, and Company, No 44. *infra*; see also 12th July 1785, Masley against Smith, Fac. Col. No 221. p. 347. See LITIGIOUS; 29th January 1796, Cheap against Campbell, Fac. Col. No 197. p. 475. See HEIR APPARENT.

The Lord Ordinary sustained the objection to the order of ranking.

But the Court, upon advising a reclaiming petition, with answers, were, in general, of opinion, that the objection was unfounded. The decree of certification (it was observed) strikes against grounds of debt not produced, but not against posterior diligence on productions already made; and it makes no difference whether the decree is or is not extracted. The case of Riccartonholm was erroneously decided.—THE LORDS repelled the objection.

Lord Ordinary, Polkemmet.
Clerk, Menzies.

For the objectors, H. Erskine. Alt. Geo. Fergusson.

D. Douglas.

Fol. Dic. v. 3. p. 14. Fac. Col. No 217. p. 511.

1785. November 22.

THOMAS GRIERSON, against Messrs DOUGLAS, HERON, and Company, and others.

No 44.

Adjudications, if within year and day, not affected by certification in the process of ranking and sale.

In the process of ranking of the creditors of Brown of Barharrow, it was, in behalf of Grierson,

Objected: That certain adjudications had been led, not only during the dependence of the action of sale, but even after decret of certification had been pronounced and extracted; that, by this last particular, these adjudications were distinguished from those in the case of Masley against Smith, 12th July 1785, (Fac. Col. No 221. p. 347. see LITIGIOUS); and, upon that ground, that preference had been denied to several adjudging creditors on the estate of Riccartonholm, 25th January 1783, (No 42. *supra*.)