

S E C T. II.

Adjudger.—Wadsetter.

1745. February 26. HAY and COCKBURN *against* LORD DRUMMORE.

HUGH DALRYMPLE of Drummore, one of the Senators of the College of Justice, standing on the roll of freeholders for the county of Haddington, it was *objected* to his title, That he was infeft in fourteen acres and five-falls of land, part of the estate of Prestongrange, adjudged by him in implement of a decree-arbitral, after several other adjudications, he could not bring these acres *in computo* to make up his valuation, as the first adjudger only is entitled by law to a vote.

Answered; He is infeft and in possession; *2dly*, His purchase, the submission to adjust the terms thereof, and decree-arbitral, are before any adjudications, and the adjudication in implement must draw back to its foundation; *3dly*, He appeared in the ranking of the creditors of Prestongrange, and of consent of the adjudgers, obtained these lands to be struck out of the sale, reserving to them to affect the price, or any part of it, in his hands.—THE LORDS repelled the objection.

Objected; *2dly*, The valuation of these acres does not properly appear, being determined only by the above-mentioned decree-arbitral, for which the arbiters were not empowered; and besides, it is not the paction of parties, but the determination of the commissioners on a proper cognition, that ought to settle valuations.

Answered; The arbiters being to adjust the terms of the sale, it was properly before them to determine, what part of the public burdens the part sold off should bear. The lands stand valued in the cess-books, and pay accordingly; and the commissioners are the only proper court to determine this matter, to whom the decree-arbitral was proper evidence; for though since public burdens ceased to be levied according to the extent, it was fit some other method than the consent of parties should be necessary to divide that; yet there needs be no such suspicion with regard to the valuation.—THE LORDS repelled the objection.

Reporter, *Lord Bahnerino.*Act. *Graham. jun.*Alt. *Maitland.**Fol. Dic. v. 3. p. 415. D. Falconer, v. 1. p. 87.*

No 124.

A person infeft on an adjudication, which, tho' not the first, proceeded in implement of a right prior to any adjudications, and was in possession, was found entitled to vote.

A division of a valuation, in which the Commissioners of Supply had proceeded on a decree-arbitral, without farther proof, was sustained.