

(RANKING OF ADJUDGERS AND APPRISERS.)

No 41. against the heir for the ancestor's debt. And, upon the same principle, where an effectual adjudication has been led against the ancestor, that must be the leading diligence in the ranking of his creditors, and upon his estate. The inconveniency which might arise, in the particular case of a debtor dying immediately after his estate is carried off by an effectual adjudication, can rarely happen, and seems to have been overlooked by the statute. If it occurred, it might be rectified, by allowing the diligence of the other creditors to proceed within the year, in the same manner as where the heir, in favour of particular creditors, has renounced the benefit of the *annus deliberandi*; Erskine, b. 3. tit. 8. § 55. At all events, this defect, supposing it incorrigible, cannot prevent the effects of the statute in cases equally within its letter and spirit.

The first two objections were unanimously repelled by the Court; who, though some of the Judges expressed doubts as to the efficacy of the last, adhered to the Lord Ordinary's interlocutor, finding, "That Sandfide's adjudication was to be considered as the first effectual."

Lord Ordinary, *Monboddo*.For Stempster and Doull, *Rae & Maclaurin*.For the Objectors, *Ilay Campbell & Crosbie*.Clerk, *Menzies*.

N. B. All the Judges who spoke, declared their opinion, That a creditor, in danger of losing his preference, by the death of his debtor, after an effectual adjudication had been led by another creditor, would obtain relief in the way suggested by the respondents.

*Fol. Dic. v. 3. p. 13. Fac. Col. No 11. p. 20.**Craigie.*1783. *January 25.*ROBERT CRAIG, *against* The CREDITORS of Riccartonholm.

No 42.

Adjudication, led after decret of certification has been extracted, found entitled to no preference in the ranking.

IN the ranking of the creditors of Riccartonholm, the Lord Ordinary found, 'That Robert Craig's adjudication having been led after the process of ranking, in which he produced his interest, had been brought into Court, and a decret of certification pronounced and extracted, he is not entitled to any preference in virtue of such adjudication, and ought, therefore, to be ranked as a personal creditor.'

Against this judgment, Robert Craig *reclaimed*, and

Pleaded: Adjudications, with the exception arising from the statute 1661, in favour of those which are led within year and day of the first effectual one, are to be considered as sales under redemption, which are preferable according to their priority; nor have the acts 1681 and 1690, authorising the sale of bankrupt-estates, introduced any alteration in this respect. From the nature of this diligence, therefore, no reason can be assigned why the petitioner, upon the produc-

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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*);

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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.