

1796. *May 19.*The REPRESENTATIVES of JOHN DUNN *against* PETER JOHNSTON and Others.

No 42.

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

Fac. Col.

*** This case is No 43. p. 273. *voce* ADJUDICATION.

S E C T. IX.

Difference between a Sale on the act 1681, and one at the instance of an Apparent Heir.—Sale of lands under Wadset.

1747. *June 10.* & 1748. *January 29.*Sir WILLIAM MAXWELL *against* IRVING and ROME.

LIEUTENANT-COLONEL JOHNSTON having died in the West Indies in the attack of Carthagena, in the year 1741, his land estate of Netherwood was brought to a sale at the instance of his apparent heir, and bought, at a public roup, before the Lords on the 21st June 1744. In the ranking upon the price, the following point was debated before the Ordinary.

Francis Grant, merchant in Edinburgh, from whom Sir William Maxwell of Springkell derives right, had obtained an adjudication on a decree *cognitionis causa* against the Colonel's heir before the sale, and while the estate was still *in hereditate jacente* of the Colonel. After the sale, Rome and Irving, who had produced their interests in the ranking, took up the same from the process, and obtained also decrees of adjudication *cognitionis causa* in February 1745, within year and day of Francis Grant's adjudication. Others of the creditors allowed their interests to remain personal as they were, and did not pretend to compete with the adjudgers; but the adjudgers, after the sale, having insisted for a preference *pari passu* with the adjudger prior to the sale, the Lord Ordinary "Preferred them *pari passu*, as being within year and day of one another.

No 43.

A sale at the instance of an apparent heir, has the effect of an adjudication for behoof of the whole creditors.