

## 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

therefore craving that the Lords would lower the standard price; the LORDS, considering that the lands held black-ward within a regality; that the debts exceeded the value thereof; and that a distribution of the estate among the Creditors was impracticable, and had been in vain attempted in the case of the Creditors of Kennet; therefore they granted warrant to expose the estate at eighteen years purchase as their price, and ordained the same to be intimated in common form.

*Fol. Dic. v. 2. p. 311. Forbes, p. 339.*

No II.  
from the creditors, representing, that nobody was like to offer so much, and that a division of the estate among them was impracticable.

\* \* \* Fountainhall reports this case :

1709. July 8.—HAMILTON of Wishaw and other Creditors to the Laird of Cleland, gave in a petition to the Lords, representing, That the estate of Cleland being bankrupt, and a roup of it raised, and probation led, on the advising whereof the Lords had fixed the price at nineteen years purchase; but when the lands came to be exposed to sale, there were none appeared to bid, being discouraged by the highness of the price, the lands holding black-ward of the Duke of Hamilton, and lying within his regality, which made them far less worth than other well holden lands; and therefore craving the Lords would abate and diminish a year's purchase, to invite buyers, otherwise the Creditors will be the only losers, and the lands will never go off; and which the LORDS did already in the case of Mr George Campbell. *Answered,* That the *minimum quod sic* of the price being constituted and established in a probation led, of what lands of that kind may give, betwixt buyer and seller, the same cannot now be altered, without reviewing and reconsidering the probation, which the Lords are not in use to do; and where lands cannot get a buyer, the act of Parliament introducing sales has provided a remedy by dividing the lands among the Creditors. But the Lords remembered, that this division had been attempted in the case of Bruce of Kennet and others, and was found utterly impracticable; and then observed that the probation of the value of lands, was only founded on credulity and opinion, some neighbouring gentlemen deponing they thought the lands worth so many years purchase, wherein the Lords themselves were as good judges as they; and finding here, from the holdings and other motives, a just ground of abatement, they brought down the price to eighteen years purchase. But for intimation to the lieges, they ordained new letters of publication to be executed before they should be again exposed to sale at that price.

*Fountainhall, v. 2. p. 512.*