

1729. January. NEWTON *against* ANDERSON.

No. 59.

A process of sale of a bankrupt estate being intended upon an adjudication, with a charge against the superior, it was objected, That an adjudication without infertment was no real right, and yet the act 1681, authorising processes of sale of bankrupt estates, allows only such a process to be carried on at the instance of a creditor having a real right. Answered, The words *real right* are here taken in a lax signification; and that an adjudication is designed also, is pretty evident from the preamble of the statute, which runs in these terms, "Considering that when estates and lands of bankrupts are affected with comprisings, adjudications, and other real rights," &c. The objection was repelled, and an adjudication with a charge found a sufficient title to carry on this process.—See APPENDIX.

*Fol. Dic. v. 2. p. 473.*

1731. January 26. FEA *against* TRAIL.

No. 60.

A declarator of terce being obtained against the deceased husband's heir, action for the third part of the mails and duties was sustained against possessors of the lands wherein the husband died last infert, though the relict was not kened, nay not even served to her terce.—See APPENDIX.

*Fol. Dic. v. 2. p. 472.*

1738. February 7. OCHTERLONY *against* M'KENZIE.

No. 61.

An adjudication without either infertment or a charge against the superior, was sustained as a sufficient title for carrying on a process of sale.

*C. Home.*

\* \* \* This case is No. 38. p. 11985. *voce* PROCESS.

1738. November 7.

INOLIS *against* JEAN MIRRIE, and LOCKHART, her Husband.

A debtor having made a partial payment to one of four co-executor creditors, but within the fourth part of the bond, the same was objected to as exceeding the sum to which the said co-executor's claim extended; which the Lords "Sustained, and found the payment was in so far unlawfully made."

No. 62.

Whether co-executors have action *pro rata*, or must all con-