

(RANKING of ADJUDGERS and APPRISERS.)

No 43.

and that application will not be listened to, where its object is to allow the creditor who makes it to get a preference. As no application, however, was made for recalling the certification in this case; and as the adjudication was not produced, as an interest, for so long a period after it was obtained, the objectors were led to believe that its sole object was to enable the creditors to draw their dividends; and, on the faith of this, they have lost the opportunity of adjudging, so as to come in *pari passu*.

*Answered*: It is not thought necessary, in practice, to apply for having a decree of certification recalled, in order to authorise a production, where the decree has not been extracted. Besides, the adjudication was not struck at by the certification, which, in terms of the act of federunt, 17th January 1756, is directed solely against grounds of debt existing, and not produced, at its date, and does not prevent creditors from afterwards acquiring preferences by diligence; 22d November 1785, Grierson against Douglas, Heron, and Company, No 44. *infra*; see also 12th July 1785, Masley against Smith, Fac. Col. No 221. p. 347. See LITIGIOUS; 29th January 1796, Cheap against Campbell, Fac. Col. No 197. p. 475. See HEIR APPARENT.

The Lord Ordinary sustained the objection to the order of ranking.

But the Court, upon advising a reclaiming petition, with answers, were, in general, of opinion, that the objection was unfounded. The decree of certification (it was observed) strikes against grounds of debt not produced, but not against posterior diligence on productions already made; and it makes no difference whether the decree is or is not extracted. The case of Riccartonholm was erroneously decided.—THE LORDS repelled the objection.

Lord Ordinary, Polkemmet.  
Clerk, Menzies.

For the objectors, H. Erskine. . . . . Alt. Geo. Fergusson.

D. Douglas.

Fol. Dic. v. 3. p. 14. Fac. Col. No 217. p. 511.

1785. November 22.

THOMAS GRIERSON, against Messrs DOUGLAS, HERON, and Company, and others.

No 44.  
Adjudications, if within year and day, not affected by certification in the process of ranking and sale.

In the process of ranking of the creditors of Brown of Barharrow, it was, in behalf of Grierson,

*Objected*: That certain adjudications had been led, not only during the dependence of the action of sale, but even after decret of certification had been pronounced and extracted; that, by this last particular, these adjudications were distinguished from those in the case of Masley against Smith, 12th July 1785, (Fac. Col. No 221. p. 347. see LITIGIOUS); and, upon that ground, that preference had been denied to several adjudging creditors on the estate of Riccartonholm, 25th January 1783, (No 42. *supra*.)

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*Answered:* As it is easy for any adjudger to obtain decree of certification in a process of sale, within a much less time than a year posterior to his adjudication becoming effectual, he might, if the objection were good, exclude, at his pleasure, the benefit of the statute of 1661. In the case of Riccartonholm, the adjudication in question had not been deduced till after *the year and day from the first effectual one* was elapsed; so that there the statutory benefit was not affected.

The Lord Ordinary 'repelled the objection;' and

The Court adhered to that interlocutor.

Lord Ordinary, *Braxfield.* Act. *A. Abercromby.* Alt. *C. Hay.* Clerk, *Horns Stewart.* *Fol. Dic. v. 3. p. 14. Fac. Col. No 237. p. 367.*

1791. June 1.

CATHARINE MACKENZIE, and others, *against* ROSS and OGILVIE, and others.

THE late Roderick Mackenzie being regularly infeft, as a crown-vassal, in the lands of Redcastle, executed a conveyance thereof, in favour of himself in life-tenure, and of Kenneth Mackenzie, his eldest son, in fee.

This conveyance contained a precept of *saſine a me*, as well as *de me*, and a procuratory of resignation; and Kenneth Mackenzie, the disponee, immediately proceeded to take a base infeftment; but he neither obtained a charter of confirmation from the Crown, nor executed the procuratory of resignation.

Both old Redcastle, who died in 1786, and his son, owed large sums; and, in the years 1788 and 1789, their common creditors adjudged the property of the lands of Redcastle, as vested in the person of the son, and the superiority, as *in hereditate jacente* of the father, upon special charges.

In order to obtain, to their adjudications, the privilege of being the first effectual, the creditors pursued different measures.

Catharine Mackenzie having, along with those whose adjudications had been conjoined with her's, obtained in Exchequer a charter of adjudication of the superiority, proceeded to infeft herself *qua* vassal in the property.

Messrs Ross and Ogilvie, on the other hand, obtained in Exchequer a charter of adjudication, which contained a clause of confirmation, whereby it was intended to consolidate the property and superiority.

The signature of adjudication presented by Mrs Mackenzie, &c. was prior to that of Messrs Ross and Ogilvie; and as it unquestionably rendered her adjudication the first effectual one as to the superiority, she maintained, that the subsequent proceedings of these gentlemen, in applying to the Crown for a confirmation, were irregular and inept; and that the infeftment in the property granted by her to herself was sufficiently authorised. In support of these propositions, she

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Lands being disposed *a me*, or *de me*, and a base infeftment taken; a creditor of the disponee, in order to render his adjudication the first effectual one, may throw into his signature of adjudication a clause of confirmation; and this, though the right of superiority has been before effectually adjudged by a creditor of the disponee.