

ADJUDICATION AND APPRISING.

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(Possession of ADJUDGERS may be restricted.)

anent debtor and creditor, the LORDS are empowered to restrict apprisers, to a part of their lands apprifed, fufficient for the annualrent, and to leave the rest to the debtor.

THE LORDS did accordingly restrict; but gave the apprifer his option of any of the apprifed lands (except the debtor's house and mains), paying eight per cent. effeiring to the sum apprifed for; the apprifer being accountable for the furplus above the annualrent, and public burdens.

Fol. Dic. v. 1. p. 15. Stair, v. 1. p. 116.

1684. February 8. 19, & 20.

WILSON *against* HOME.

ALEXANDER WILSON, merchant in Edinburgh, having, in 1676, adjudged, from Sir Alexander Home, his lands of Renton, he raised a reduction of it upon these two grounds: *1mo*, That, conform to the 62d act 1661, he had offered him land paying the annualrent of the sum, and he had refused it. But many of the Lords thought that was but temporary, (as the suspension and forbearance in that act was.) *2do*, That he had adjudged for more than he ought; because he had adjudged the whole lands, and a fifth part more. THE LORDS also demurred on this, as, at most, only restricting the adjudication, *nam utile per inutile non debet vitari*; and the mistake arose from the libelling of the summons, wherein a fifth part more than the sum is claimed, in place of the old Sheriff-fee in comprisings; which fifth part is only due in case he be restricted to a proportional part of the lands effeiring to his sum. But if the debtor appear not, so that all is adjudged, there is then no use for the said fifth part, though it be, through mistake, inserted in the decret.

The cause being advised, 8th February current, 'THE LORDS sustained the adjudication;'—but, on the 26th February 1684, they made an act of federunt for the future, discharging any to adjudge the lands and a fifth part more in time coming, **under the pain of nullity**. But now, in bonds, they turn the fifth part to a penalty; so that, in a bond of 5,000 merks, whereof the penalty used to be only 5, or 600 merks, they now make it 1,000 merks.

And, the next day, being the 20th, the LORDS advised the other branch of the debate; and found the debtor may force an apprifer or adjudger, (so long as his legal is unexpired,) to restrict his possession to lands effeiring to the annualrent of his money; and the lands to be allocate at the option of the Lords of the Session, in respect of the clause contained in the 62d act 1661, anent debtor and creditor. Though it was *alleged*, This was only a temporary clause, and depended only on the six years suspension of principal sums, and expired with it; yet the LORDS found it a general and perpetual law.—Which some thought a great encroachment and invasion on the rights of apprifings and adjudications; and, by this, during

No 1.
allowed his
option of the
lands, except
house and
mains.

No 2.
Possession re-
stricted; the
lands allocat-
ed by the
Court.

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No 2.

the legal reversion, they can neither remove the debtors from the mansion-house nor parks, but must take what land the debtors have moyen with the Lords to allot them; and then make them accountable.—This was imputed to the Clerk-Register, to be a preparative against Clackmannan his son-in-law's creditors. See Wilson against Murray, (No 1. above.)

Fol. Dic. v. 1. p. 15. Fount. v. 1. p. 268. & 271.

* * * See the act of federunt alluded to; and the case as reported by Sir P. Home, and Prof. Falconer, at p. 79. and 84. v. 1. Quarto Dictionary.

1728. *November*

Lady KIRKHOUSE, *against* her HUSBAND and SON, and their CREDITORS.

No 3.
Possession re-
stricted, to
give room to
a claim of ali-
ment.

CASSIE, elder of Kirkhouse, in the year 1715, was attainted of high treason, and his estate found to belong to his son; upon this *medium*, that, it being a tailzied subject, the father had incurred irritancies, and fallen from his right, before his rebellion.—Lady Kirkhouse, spouse to Kirkhouse elder, in her contract of marriage, was provided to the liferent of 1000 merks, to take place after her husband's decease; but, after the fee was established in her son, having insisted against her husband for a separate aliment, upon the head of mal-treatment, she not only obtained her son to be made liable for a separate aliment, but likewise, upon the act 1661, obtained that the adjudgers upon the estate should be obliged to restrict themselves, to their annualrents during the legal, that there might be room for her to affect the rents of the estate for that aliment. (See TAILZIE—ALIMENT.)

Fol. Dic. v. 1. p. 15.

RANKING of ADJUDGERS and APPRISERS.

No 1.
Adjudications
in security,
come in *pari*
passu with
simple adjudica-
tions, for
liquid sums.

1684. *January 2.*

BRUCE *against* HEPBURN.

* * * For the particulars of the case, as given by Lord Fountainhall, and Prefident Falconer, See p. 57. v. 1. Quarto Dictionary.