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APPRISERS *and* ADJUDGERS *may be restricted, in their Possession, to their neat Annualrents.*

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\* \* THE act 62, Charles II. 1661, (p. 271. duodecimo), contains this clause :  
 “ And, in case the lands, and others, comprised, exceed, in yearly rent and value, the annualrent of the fums contained in the saids comprifings, and of the expence disbursed in obtaining infestments thereupon, and the debtor shall desire the creditor to possess the lands and others comprised, it shall be lawful to the Lords of Session, likeas the saids Lords are hereby empowered and authorized, upon a supplication to be made to them by the debtor, and citation of the comprifers, to appoint the apprifers to possess such of the saids lands and others, during the legal reversion, as the saids Lords of Session shall think just and reasonable : The saids debtors always giving possession to those who have right to the saids comprifings ; and ratifying their possession already apprehended by them (if any such possessions they have) of such of the saids lands and others, as the saids Lords of the Session shall appoint, not being beneath in yearly rent and value of the annualrents above-mentioned ; or otherwise giving to the creditors (whether they have possession or not) sufficient security, at the sight of the saids Lords, for payment of the saids annualrents, during the time foresaid ; the saids Lords of Session having always power to determine, whether, in the cases foresaid, the debtor shall give surety to the creditor, for his annualrents ; or, the debtor not being able to give surety, the creditor shall be obliged to take possession of the debtor's lands. And if the Lords of Session shall appoint, in the case foresaid, the creditor to be possessed for his annualrent ; then, and in that case, the debtor shall be holden to deliver the evidents of the saids lands to the creditor, or transumps thereof ; providing always, that the creditor's right, by virtue of the saids comprifings, be noways prejudged after the expiring of the same : And that the whole lands and others, both such as shall be possessed by the debtor, and remanent of the lands and others contained in the saids comprifings, shall pertain to the creditor irredeemably.”

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1662. *June 27.* Sir WILLIAM WILSON *against* Sir WILLIAM MURRAY.

No 1.  
 Apprifer's  
 possession re-  
 stricted, but

WILSON having apprised Sir William Murray's estate, pursues him and his tenants, for mails and duties ; who *alleged*, That, by the act of Parliament 1661,

(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.