

fender should clear accounts within six months thereafter; which was not done.—  
 THE LORDS restricted the adjudication to the principal, annualrents, and composition paid to the superior, without accumulation of annualrent upon annualrent; and found, That the adjudication being in absence, without probation of the rental of the lands adjudged, albeit the creditor behoved to libel a fifth part more in his summons, being uncertain whether the debtor would compare or not; yet, that the creditor ought not to have extracted a decret for the fifth part more, seeing the adjudication did pass, of the whole estate.\*

*Fol. Dic. v. 1. p. 6. Sir P. Home, MS. v. 1. No 40.*

No 2.

1682. *March.* LORD CARDROSS *against* COLVILL.

THE LORDS found, That a citation in an adjudication, interveening between a disposition and infeftment, was no *medium impeditum*; the infeftment on the disposition, being before the perfecting of the adjudication. And the act of Parliament equiparates the citation to a comprising, viz. A citation to a denunciation, and an adjudication to a decret of apprising.

*Harcarfe, (COMPRISING,) No 278. p. 66.*

No 3.  
 Effect of citation.

1683. *March.* KER *against* RUTHVEN.

PATRICK KER of Farnily, having obtained a decret against Edward Ruthven; as representing the Earl of Bamford, his grand-father, for payment of the sum of 5000 merks, and annualrents contained in his grand-father's bond; which, being assigned to Mr William Weir advocate, and he having adjudged from Edward Ruthven, upon the late act of Parliament concerning adjudications, so much of the sum of 1600 merks; for security of which, Edward Ruthven was infeft in an yearly annualrent out of the Earl of Callendar's estate, as did effeir and correspond to the principal sum and annualrent, contained in the said bond, and a fifth part more, conform to the act of Parliament; and the adjudication being disposed to Mr David Mayne writer, and he having distressed the Earl of Callendar, he raised a suspension of double poinding against Mr David Mayne and Edward Ruthven.—It was *alleged* for Edward Ruthven, That the adjudication ought to be restricted to the principal sum and annualrents; and the adjudger

No 4.  
 A fifth part more, may be included in adjudications of rights of annualrent.

\* This case is also reported by President Falconer, thus:—In an action of reduction, pursued at the instance of Geddie against Telfer, of several adjudications, deduced against Geddie, whereunto Telfer had right; the LORDS found the following reason of reduction, relevant to retrench the principal sum and annualrents, and composition paid to the superior, without accumulation of annualrent upon annualrent, viz. That the adjudication being in absence, without probation of the rental of the lands adjudged, the decret bore a fifth part more; which the LORDS found, because, albeit the creditor behoved to libel the same in his summons, being uncertain whether the debtor would compare or not; yet that he ought not to have extracted a decret therefor, when the party did not compare.

*President Falconer, No 6. p. 3.*

No 4. could not have a fifth part more in this case; because a fifth part more is only allowed by the act of Parliament, in case of adjudications of lands; which was done upon this reason and consideration, That the creditor was forced to take land for his money, and that he did undergo the hazard of tenant's fruits, wares, and public burdens; whereas, when a liquid sum is adjudged in satisfaction of the debt, the same is liable to no such inconveniencies; but the sum adjudged, ought to be ascribed in satisfaction of the debt, and is equivalent, as if actual payment had been made; and, if the debt had been paid, at the time of the leading of the adjudication, as the creditor could not have exacted a fifth part more; so neither ought it to be allowed in the case, when a liquid sum is adjudged equivalent to the debt.—*Answered*, That the act of Parliament makes no distinction betwixt the adjudging of lands and sums of money; but it is statuted in the general, That there shall be adjudged and decerned to the creditor, in satisfaction of his debt, such a part of the debtor's estate, consisting of lands and other rights, which were in use to be apprifed, as shall be worth the sum, principal and annualrent, then resting to the creditor; and, albeit the reason given in the act of Parliament is, that in respect the creditor wants the use of his money, and is necessitate to take land for the same; yet, as the statutory part of the act is general, allowing a fifth part more of all rights that were in use to be apprifed; it must likewise be extended to heritable sums that are adjudged; and the reason given in the act of Parliament, albeit it mentions only lands; it is only because lands are the subject that most ordinarily is in use to be adjudged; and is not restrictive, but exegetic; and a particular reason in law, doth not restrict the general law: As also, this reason holds likewise in the adjudging of sums of money; because, in that case, the creditor is necessitate to take so much of the sum in satisfaction of his debt, as if the adjudication had been of lands.—THE LORDS sustained the adjudication, as to the fifth part more; and found the reason of the act of Parliament extended to sums due by infestments of annualrent, as well as to lands.\*

*Fol. Dic. v. 1. p. 6. Sir P. Home, MS. v. 1. No 463.*

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\* The same case is thus stated by President Falconer, January 10. 1683.—Ker being creditor of Edward Ruthven, he did adjudge so much of a right of annualrent, due by the Earl of Callendar to the said Edward, as did amount to the payment of his debt, and a fifth part more, conform to the new act of Parliament made anent adjudications.—It was *alleged* for Edward Ruthven, That there was no foundation, from the new act of Parliament, for adjudging for a fifth part more of annualrents; seeing the act of Parliament only makes mention of lands; and the reason of the act of Parliament was, That the creditor lay out of his money, and was forced to take land; which did not militate in this case, in respect the Earl of Callendar was personally obliged in payment of the money, upon which the lands were redeemable; and so the creditor adjudging might raise his money.—THE LORDS sustained the adjudication as to the fifth part more; and found, That the reason of the act of Parliament extended to annualrents, as well as lands.

*President Falconer, No 40. f. 22.*