

1684. *January.* LADY KINCARDINE *against* THE CREDITORS.

In a competition, betwixt a citation on the new act of Parliament, anent adjudications, and a wadset, it was *alleged*, That the wadset was the first real right.

Answered: By the late act of Parliament, citation on a summons of adjudication, is declared equivalent to apprising; and so, the citation in question, being before the wadset, must be preferred.

THE LORDS sustained the answer; but here the case was not fully debated, and the citation was first; which was a great speciality.

Harcarse, (COMPRISING.) No 300. p. 72.

No 5.
Effect of citation.

1684. *February.* CRICHTON *against* ANDERSON.

In a competition, betwixt a creditor who had arrested the rents of his debtor's lands, and another, who, before the arrestment, had executed a summons of adjudication; it was *alleged* for the adjudger, That, seeing by act of Parliament, citation upon a summons of adjudication, was equivalent to an apprising and a charge against the superior, the rents must be his from the time of the citation, which preceded the arrestment; and he was not *in mora*, of perfecting his diligence of adjudication, after the arrestment.

Answered: The design of the act of Parliament, is not to prejudge legal diligence; and therefore, the arrestment ought to be preferred, though posterior to the citation.

THE LORDS sustained the answer relevant.

Harcarse, (COMPRISING.) No 301. p. 72.

No 6.
Effect of citation.

1684. *February 16*.* WILSON *against* HOME.

WILLIAM WILSON, merchant in Edinburgh, having adjudged the estate of Rentoun from Sir Alexander Home, and being inest, pursues a removing from the house and mains of Rentoun.—*Alleged* for the defender, that the adjudication was null, being led for a greater sum than was due, in so far as it was not only deduced for the principal, annualrent, and penalties, contained in the bonds; but for a fifth part more, whereas the hail estate being adjudged, the defender not having compeared and produced the rights, that the pursuer might have been restricted to a part of the lands, the adjudication did pass as an apprising; which could only have been for the principal, annualrent, and penalty, and not for a fifth part more; which was only provided, in the case, if the creditor was restricted to a part of the lands, as appears by the act of parliament concerning adjudications. And albeit, the adjudication could be sustained for the just sums, yet the defender cannot be removed from the house and mains; because it is

No 7.
Apprisers and adjudgers may be restricted in their possession. Special adjudications only, can contain a fifth part more. General adjudications, with that clause, will be restricted to principal, annualrent, and penalty.

* The date in the MS. is by mistake, December 1683.