

Lord Stair (ibid 811) is of opinion, that a Creditor for bygone Annu-
rents due by Infeftment, must adjudge the whole Subject whenever
he stands Infeft under Reversion of 10 Years, and cannot ad-
judge specially an Equivalent part with a fifth part More,
that here the Creditor is under no necessity against his origi-
nal Intention to take Land for his Money; the Main Design
of the Infeftment being to affect the Land and not the Deb-
tor, and no part of the Land is affected by the Debtum
being appraisable or adjudicable. Besides that he is
not Excluded as personal Creditors are, from Access to the
Debtors. But when a Debtor hath Right to an Infeftment
of Annual rent, his Creditor may adjudge so much of the
Infeftment of Annual rent as will satisfy what is due
to him and a fifth part More, as in an adjudication
lands 10 January 1683 per contra Ruthven. Because
albeit the Reason given for the fifth part, in the Act
Parliament is, that the Creditor is forced to take Land for
his Money (lands being more or less adjudged than
Infeftments of Annual rent) and the adjudger upon Annu-
rent might not withstanding his adjudication raise his
money from the Debtor, who is also personally liable: Yet
this Reason is not Restrictive, but Exigible; nor doth
particular Reason Restrict a General Law. Besides, the
Reason given holds Equally for an additional fifth part
in the Case of Annual rents adjudged, as in the Case of an
adjudger: seeing an adjudger of an Infeftment of Annual
rent is he is obliged to take the whole Subject, and the whole
of his debt. The Lords adjudge the Subject to belong to the Creditor
by their Sentence, called a Decree of adjudication. By Virtue of
such Decree, the adjudger may immediately Enter to Possession
and Enjoy the Rents for his Annual rent during the whole
Redemption, without being liable to Count and Redounding
Case of Redemption, as proper Good Sellers. He may before
acquire possession in the manner of Execution against his
Debtor by horning, Caption Arrestment or otherwise: But
cannot, after he hath obtained Possession, use personal Execution
against the Debtor by horning, Caption Arrestment or otherwise
with Act 19 Par. 2 s. 3 Ch. 2 Unless upon the Warrantice
Case of Eviction. Because a Man should not use Execution
he has obtained to payment. Yet it is a question, if the Debtor

would be free from personal Execution, by the adjudgers obtaining pos-
session, where the estate adjudged is not sufficient to pay the debt.
McKenzie observ. on Act 19.

A General adjudication is when, upon the Debtor's not ap-
pearing in the process of adjudication, or upon his failing to produce
a progress and Renounce, after his taking a day for that effect
the pursuer gets the Debtor's whole estate adjudged to him, as
it might have formerly been appraised & sold by. Because it is
unreasonable to force Creditors to take for their Money a forced
portion of Land, without getting a sufficient right and
Security. A Debtor will frequently give a proportion of Land
to his Creditor for his Money, if it is probable and his Case
more favourable than the others whose estates were appraised for
Money: seeing those could not find their whole estates to be for-
feited away by appraising for the smallest Debts, without dan-
gering full payment within the legal time, and could not as Deb-
tors may now, charge their Creditors to take Land in propor-
tion to their Money. But Debtors being frequently unwilling to
produce a progress and Renounce, the Law has been changed, and
embrace the benefit of this Law: so that by General Adjudica-
tions have mostly taken place, and commonly in particu-
lar great Debtors, bankrupts, and others who are in ad-
judication by Sale most necessary. Albeit no Debtor is proposed
any advantage by suffering a General adjudication to pass
against him, except a Dyce or which shall stand to be ex-
acted by a special Adjudication: And others had no preju-
dice by the penalty of a fifth part, which doth not exceed the
ordinary penalty of a 100 pound for 1000 Merks and the 50
Merks of Interest in appraisings, which in the most
favourable Cases used not to be modified unless the Apprai-
sing was in formal Stair Lib. 3 fol. 2 553. Albeit where an
Adjudication is special, proceeding upon proof of the Rentals
and the Debtors production of the Writs, Decree ought
to be given for the principal sum, Annual rents there-
of, and a fifth part More, without the Penalty in the
Bond: Yet where an adjudication is General, in absence
of the Debtor, and without proof of the Rental, Decree
should be given only for the principal sum, annual rent,
and designation before or was proposed a