

Ch. 2. And Sir George McKenzie observes on Act 19 that lands formerly appraised may not be adjudged, that not being Expressly Discharged; as if it were in the Election of a Creditor to appraise or adjudge lands formerly appraised as he thinks fit. But yet an adjudication of lands Effelming to the Debt by the Act of Parliament 1672 (Act 19) was not found Compendious where another Creditor had appraised the whole lands within 40 days after Publication of the Act, tho' posterior to the date thereof 26 July 1673 *Stilton contra Spence*. Because such appraisals being see before the Act had been, was in the Land which had been see before the Date of the Law. Which clearly testifies that the Lords that the Act of Parliament Excused adjudications of lands formerly appraised by others.

I propose to treat of appraising, and adjudication next in place thereof, first Separately, in so far as they differ, and then Jointly, in so far as they agree.

Section 1
of Appraisings.

For preventing needless expense by many Appraisings, the Debtors lands by scattered in many Jurisdictions, the Lords Direct Letters of Appraising under the signet, to the Sheriff at the Sheriff in that part, containing an Ordinance or Dispensation to sit at Edinburgh whether in session or Vacation time. Where advice of Lawyers might be had in cases of intricacy or Difficulty. And some times the Lords grant Dispensations to sit at other places: But the passing of Bills or Dispensations of Court among the Commons was Discharged 22 July 1671 heirs of Lundy Contra E. Southwell and others.

The Messenger must first search for moveables in the debtors house upon the ground of the lands. For an Appraising waiting this Solemnity is made 2 Stat. Rob. 1 Cap. 9. Act 37 Par. 9. 30 July 1623 *Nicolson contra Bailie and Whitelaw*. Tho' tho' the Lands be United in one barony or Manory, Moveable goods must be searched for upon the ground of each land 22 January 1624 *Hoppringle contra Ker*. So great faith is given

to the Messengers Execution bearing, that he searched for Moveables and could find none, or not so many as would satisfy the debt, that the Appraising will not be Reduced upon an offer to prove, that there was abundance of Moveables upon the ground; unless these had been presented to the Messenger, when he was executing the Appraising and leaving the doles or Copies upon the ground 30 July 1623 *Nicolson contra Bailie and Whitelaw* Stair lib. 4 fol. 23 & 4. McKenzie observes on Act 37 Par. 5 & 3. For as in law facta sepe valent qui fieri non debent: So tantum Creditor Nuncius Referenti se fecisse Executionem in rebus, quia non Estabant bona sua sicut Debitoris, quod non videtur volens probare for varium ad annullandam Executionem. *Conf. lib. 1 n. 1.* By the same way, moveables are first to be taken than Immobilia; and when both things are short, *Summa et Nomina Debitorum* L. 15 § 2 ff. De re judice. But this Order is not strictly observed in particular Countries. For in this instance, the Debtor may if he please to appear determine the Appraising or Execution of Justice in the order of Distraint. *Boisjard de vic ad artic. Cap. 35.* If the Superiority is to be appraised, there must be a search for moveables 22 January 1624 *Hoppringle contra Ker*. Because it is not probable that the Superior would have any goods upon land belonging in property to another. The Messenger after search finding no Moveables, or not so many as would satisfy the Debt Denounceth the lands to be appraised such a day upon the ground, and the Market Cross of the Burgh or the three Kingdoms or Regality where they lie; and cites the Debtor personally or at his Dwelling place upon 15 days if within Scotland, or at the Market Cross of Edinburgh and pier of Leth upon 60 days if he be abroad; to compare before him that day. The Messenger must deliver a Copy of the Denunciation to the Debtor if personally appeared, or leave it in the lockhole of the most patent gate of his Dwelling house where he cannot be met with; and must also leave Copies at the Respective Market Crosses where the lands lie, and upon the ground of the lands. The Copy left upon the ground is ordinarily fastned to a Cloven Stick stuck into the ground off the Executor of the letters of Appraising who denounced the lands to be appraised, cannot conveniently Judge in the appraising, he must send a Warrant to another Messenger to sit as Judge; or the Warrant may be Insord in Execution of Appraising. The Appraising must not be Led either on Sunday or