

Of Wool and other Creditors of Hardens a subject belonging to one of three Coprincipals in a bond, being arrested by the creditor in the bond, who was preferred to other Creditors Arresters of the subject; The Arrester preferred who thereby recovered full payment of what was owing to him was not obliged to assign his bond to the other Arresters Postpone, for recovering off the other two Coprincipals the surplus paid to himself of the Common Debtors estate more than his third share: all but the third two thirds was competent to the Common Debtor himself. In respect these other Arresters postpone had not affected the said Relief by Assignation, nor were Creditors to these other two Coprincipals against the Assignation was bought 24 Feb: 1708 Kennedy contra Baines and Crawford.

But where a preferable Creditor is paid by another Creditor or by a Cautioneer or by any stranger out of his own effects, and not out of the effects of the Common Debtor; the payer must be assigned to that Creditor by preference and to any other Security he had for his money from the Common Debtor: Unless the Creditor receiving payment can show that Assigning will be hurtful to his own Interest. For as on the one hand Malitiosum est indulgentum, a Creditor is not to be induced by unreasonable capricious Humour, s. 38 ff de Rei Vind. so on the other hand a Person can be obliged to assign to his own prejudice; Scilicet quisque sibi proximus, Christy begins at home. Thus a Cautioneer making payment upon a Debtor is intitled to claim such an assignation of the Creditor to whom he pays, 10 January 1668 Leslie contra Grant. An Appriser pursuing Reduction of an Infeftment in favour of the Common Debtor ex Capite Inhibitionis; for that he had inhibited the Debtor upon one of the Bonds appraised for, before the Grant of such Infeftment; was upon the Excluded Creditors offering to pay the Debt in that Bond, ordained to assign the Bond and Inhibition, with this provision, that the assignation should not be made use of for Reducing the other Bonds in the Debtors apprising granted to him. After the Inhibition 11 Feb: 1676 Bruce contra Mitchell, 19 July 1677 Christy contra Hay. A person having Infeftment of Annual rent, in several lands belonging to his Debtor, in one of which another Creditor had a posterior Particular Infeftment; and having also a General Infeftment Posterior to the others particular Infeftment: The other Creditor paying the sum in the first particular Infeftment

may

May oblige him whom he satisfies to Communicate and assign his Preferable Infeftment to the payer, for recovering proportionally payment of his Annual rent out of the other Lands, with this Condition, that the assignation should not be made use of against the Creditor's Posterior Infeftment 21 Decemb: 1710 Pitcairn contra Halcraig. Discharge in Cautioneer on payment is not competent to the Principal Debtor, unless the Cautioneer Concur; but the principal may be discharged in name of the Creditor to the Cautioneer's behoof 13 July 1675 Brown contra E. W. the Earl. Again, some Goods being disposed and delivered to a Creditor in security of a Debt, and arrested in his hand by another of the Debtor's Creditors, at whose Instance the Disposition was Reduced upon the Act of Parliament 1696 as made after the Debtor was Bankrupt, in the terms of that Statute; The Arrester insisting in his forthcoming realignment & being upon Payment made to him by the Debtor to assign to the Debtor his Debt and Diligence pro tanto; with Reservation and preference of what Debt was then yet resting to the Debtor 19 Decemb: 1705. Man contra Reid. One having, after Inhibition served against him, transmitted his lands to several singular purchasers; and one of these having paid some money to the Inhibitor, for raising from the Inhibition as to his purchase, and Restricting it as to the Debt: That Payment was sustained to be the Debt pro tanto; albeit it was not given in satisfaction of the Debt, but only to revive the Debtor to Restrict his Inhibition 8 January 1673 Babantyne contra Edgar; no idem bis Reigatur.

Payment may be made either to the Creditor himself, or to his Order, as to a factor. If a thing is due to two or more Creditors Solidly, that is in such a manner that every one of them has full and ample right to receive the whole; The payment that is made to one of them will discharge the Debtor from all the others s. 13 ff de Acceptil. ff de Acceptil. If there be no Solidity among several Creditors for one and the same thing, that is, if each of them has not a right to receive the whole thing, but only his portion of it, none of them can receive the whole for the others, unless they all consent to it which is a consequence of the former Position, payment may be made to one who is Solus.

may
entire
of
the
say
have
used
in
the