

to the Creditor by the last Infeftment in a separate personal bond for the debt in his last Infeftment granted by their Common Debtor, yet that personal obligation could not hinder the granter thereof to claim preferance upon his Infeftment from the common debtor for a distinet debt, to a later Infeftment which he pay under no obligation to warrant or make effectual as being the deed of another, viz. the common debtor deserv'd by the first Infeftment of the said funds and Annera hea he are differently ranked things. If the Infeftment is preferable to all Creditors by Voluntary or legal rights for what is due to him by the nature of the tenor of the Infeftment, as he is dicit for feu holdings, nonentry duties in Ward holdings, and avails of marriages, whether due by the nature of the feu as in ward holdings, or by the tenor of the Infeftment as in feu dicit in cium Marriages Stair lib. 4 tit. 35 § 24. 2/ Infeftments for warranty contained in the same Infeftment with the Infeftment of the principal lands: which Infeftment for Warranty takes no effect till distinet, and then are drawn back to the date of the Infeftment, Stair ibid. 3/ Infeftments designed in the Vestment itself are preferable to him rightly and to all Infeftments flowing from him Stair ibid. 4/ Infeftments for Security and Satisfaction or payment of Sums, are real burdens upon the feu of the grantor of these Infeftments. And the Sums so secured may be the ground of an apprising or adjudication preferable according to the date of the Infeftment. Nay, the an adjudication be so found, the Creditor thereon will be preferred in a Competition according to the date of the Infeftment. ~~But where an apprising or adjudication for a Sum with the burden whereof Infeftment is granted will be preferred as of the date with the said Infeftment Stair ibid. 8/ All apprisings or adjudications within year and day of the date of the first apprising or adjudication effectual by Infeftment or charge against the Superior, come in pari passu act 62 Prerogative 1 Ch. 2. But a charge against the Superior tends only to regulate a Competition of adjudications one with another, and gives no preferance in a Competition with Voluntary rights 10 March 1653 Aikenhead contra Baillie Justice. 26 Feb. 1724 Stirling 8c. contra Annual renters upon the estate of Ballagan.~~

There's no Difficulty of Dividing the rent or price of an Infeftment estate among Creditors, where the free rent exceeds the Annual rent of their debts: Seeing all will be paid of their Current Annual rents, and of the principal Sums by a later. But then still the Creditors must be ranked, to the said it may be

Determined who shall first have access to the tenants: for if they should promiscuously distress the tenants, the lands might be laid waste. There fore where there are but two annual renters, the lands will allow time due to the first to who is to be preferred by joining the ground; superceding Exception at the Instance of the second Annual renter till a certain day. The by the papers the following there are many real Creditors who should be preferred upon a common factor to assist the credit of the tenants, but as it is upon their application, appoint a factor who has no power to receive profits. The Quarter house common factor, having power to distres the tenants of the rent: or however say of the tenants, the tenants shall be ranked among the Creditors according to the date of their annual rents, which are preferred according to the date of their papers, unless there is a special provision of a Division of the land among the tenants, or a special provision to the rest of the Creditors, in taking of the land, or in being of a what distinet from to be taken by the tenants. If the tenants have taken of the land, then must pay in the overplus, which the next Annual renter must accept in part of payment, and take time for the rest in the year, or at least an annuity as in c. Stair lib. 4 tit. 35 § 26. If there is some other provision as to the proportion of this Share, the first adjudger has a privilege to take a room for the rent, and interest, and so the rest of the tenants in their order. If there be one tenant, and one of several real Creditors, they must make an adjuication. If the present of the estate can not satisfy the demand of the debt, the adjudgers are appointed as joint proprietors, and Annual rents by the first rent anterior to the first effectual adjudication, as in c. on the property. The Annual rents affecting the property, necessary part thereof are first to be satisfied in order according to their date; and those who are prior carry all to the Exclusion of posterior Creditors. If the free rent exceed the Annual rent due to all the Annual renters, the overplus falls to be divided proportionably among the adjudgers Stair ibid. § 28.

From the rule of Division aforesaid there has this Exception, that where any of the Compelling Creditors could receive the right of another in a process of Rediction, they draw in the Competition out of the Share of those Creditors whose rights are liable to Rediction of their Instance, so much as to make the Shares they would have had if such Reducible rights were not in the field: So as the Creditors by