

What hath been said of the particular effects of the several steps, an appriser's or adjudger's Diligence, will afford much light to clear and Determine the preference of Competing apprisers or adjudgers.

Albeit a Debtor cannot after an apprising or adjudication of lands, dispose or do any Voluntary deed to the Apprisers prejudice if he be not in Mora of Completing his right: Yet in a Concurrence of two apprisers, the second first Completing his Diligence is preferred, without Enquiring whether the first was In Mora or Not. As the true Owner of Moveables Arrested cannot Dispose or Alienate them; till another of his Creditors may Seize them by pinding, or by obtaining a first Decree of forth coming upon a second Arrestment. In a Competition of Apprisers and adjudgers for personal debts, the first Charge to the Superior to enter and Infeft him is preferred to a posterior Charge first Infeft by the Superior's Partiality, in Giving obedience to his charge and suspending the former. January 1632. Ferguson contra McLenzie. Hair lib. 3 tit. 2 § 21. McLenzie Infeft lib. 2 tit. 12 § 8. As Receiving him within three years of the first Charge 3 Decemb. 1664. L. Clerkington contra Constable. Yea an Appriser who first denounced the lands to be appraised, was preferred to one who obtained the first Decree and Infeftment: In Respect he did upon his own Charge, in Collaboration with the Common Debtor, who spent in his name the charge and Denunciation; and while that suspension was lasting, he acted and expedit his own apprising and Infeftment, and Vindicated his proteste Octob. 28. November 1628. Borthwick contra. Albeit a Charge against the Superior upon an apprising is Equivalent to an Infeftment in a Competition of Apprisers or adjudgers, in themselves, and doth so bind up the Superior that he can do nothing to prefer one to another: Yet it is not Equivalent to Infeftment in a Competition with a Voluntary Right. Therefore in a Competition betwixt an Appriser who had charged the Superior, and one having Right by Disposition from the Common Debtor before Denouncing of the lands to be appraised, and confirmed by the Superior after a Charge given him upon the apprising, the Lords in Respect the Disposition was prior to the Denunciation of the Apprising, preferred the Voluntary Right confirmed by the Superior's Confirmation, albeit posterior to the Charge upon the Apprising to March 1643. Ashhead Contra Baillie Justice. Again, in a Competition betwixt Annual renters and adjudgers where the heretable bonds in favour of the Annual renters were prior to the adjudications, and the Infeftment

on the rights of Annual rent posterior to these adjudications and Charges thereon: The Infeftments of annual rent were preferred to the adjudication on which the Infeftment had followed notwithstanding of the Anterior Charges against the Superior; because an Adjudication with a Charge not being a real right that Requires a special Service, cannot compete with an Infeftment 26 Feb. 1724. Stirling 80. contra Annual renters upon the Estate of Ballagum. An Appriser upon a 60 Days Denunciation against his Debtor out of Scotland, was preferred to one who was appraised before him upon a posterior Denunciation upon 15 days: because the Common Debtor was first brought home to the end he might attain the first apprising, by being obliged to come upon fewer days, Nicolson. But tenants of both kinds hath contra Ward: law. Apprisings or adjudications within Year and day of the Decree of apprising or adjudication first Effected by Infeftment, or a Charge against the Superior, come in Pari passu, equally and were but on Apprising or adjudication not be Par. 1 lib. 1 Ch. 2. Jurat. 17 July 1668. Sheard Contra Murray 27. Novemb. 1672. As also in the Annunciations McLenzie above. On Feb. 31. Par. 1 lib. 2. Ch. 2. Jurat. doth not import Equality of Chares, but that they are to draw out of the highest appraised or adjudged, Chares proportionable to the sums in their respective Decrees. Hair lib. 4. tit. 35. § 25. And also 208. or adjudgers are brought in equally, that no Creditors may have Reason to complain of being surprised by the more diligent of others, who perhaps had occasion to know before the Common Debtors thinking Condition: And that they might not by getting the Head of the Rest in suddenly apprising, leave them nothing to apprise or adjudge but the legal Reversion, which had often proved Ineffectual to posterior apprisers, because of their Incapacity to be deemed prior apprisings thro' their money being in the hands of the Common Debtor. The Law (act 62. Par. 1 lib. 1 Ch. 2) requires Exact Diligence for obtaining the same, to make the first effectual apprising; but Custom requires no more Diligence than a Charge against the Superior. For it being unreasonable, that an appriser or adjudger should force the Superior by a Caption to receive him for a Vassal, and the apprising or adjudication during the Legal being only pignus proptorium not denouncing the Debtor Vassal, where upon the Superior cannot force the appriser or adjudger to take Infeftment; an apprising or adjudication with a Charge, hath during the Legal the same effect as if Infeftment were Expedite Hair ibid. An adjudication is understood to be within Year and day of another, if it be forth