

Expense must be upon the purchaser and Creditors who get payment and Satisfaction out of the price proportionably Efferring to the part they get the such expense would be allowed against the Debtor if there was any surplus plus over and above the payment of all his debts. But funds due upon appraisings or adjudications, albeit made up of penalties and terms, salaries, beloved to be stated and satisfied out of the price in respect of the Nature of the Diligence that made the whole as a principal sum.

23 Feb. 1688 Creditors of formerly Compelling. Creditors who are preferred to the price of the Lands are upon payment, obliged to Discharge their rights and Diligence at their Instance in favour of the purchaser with Warrantie quo ad the sum received by them: so that in case of Eviction of the Lands dispensed, they shall be liable to Refound the sum in whole or in part Efferring to the Eviction, and the sum paid to them, with the annual rent thereof from the time of the sale as is provided. Intimation of the proof of Eviction be made to the said Creditors before Discontestation in the Cause act of Decr. 13 March 1688.

A life rent annuity affecting the Lands, is not an Interest purgable by payment, and therefore the Buyer (who must purchase the Land with that hazard of the life rent surviving her husband) should have so much of the price in his hand as the annual rent thereof may be coming to the Creditors during the husband's lifetime. But if the Buyer would offer sufficient Caution to warrant the Buyer against the hazard of the life rent in case it should happen to ^{take} effect, the Lord will consider if the Buyer should accept of the security offered 5 June 1688 Gladstones of Whiteclaw contra Creditors of Earl of Harwood. The purchaser of a Bankrupt Estate may a year after the Decree of sale Consign the whole price with annual rent due at the time of the Consignation or so much thereof as remained in his hands over and above what is warrantably paid to Creditors preferred, in the hands of the Lord of Edinburgh (who are bound to receive it) and allowed for the benefit of Creditors to keep the Consigned Money for a year from the first term (and term) Whitsunday Lammas or Martinmas after the Consignation, upon payment of three per cent till it is called for. The Money retained by a purchaser for a life rent, may be so Consigned after the life renters death upon Intimation to the Creditors who got the rest of the price. Which Consigned Money with annual rent thereof at three per cent must be made for the coming on the Lord's order under the penalty of the tenth part of the principal sum, and of the ordinary annual rent of the principal after the date of a Charge of horning for

that Effect. Which the Lord will authorize to be given upon the Creditors application and Consigning in the Clerks hands their Conveyances in favour of the purchaser in so far as their several rights may affect the purchase. In case any debate remain undetermined amongst the Creditors about their preferences, the Lord upon their application give Warrant to uplift and employ the sum Consign'd upon sufficient security bearing an interest at 6 per 100 Par. K. W. The purchaser paying the price to the Creditors conform to their preference, or Consigning it as above, is Exonerated and the purchase freed of all debts of the bankrupt or his authors: And his heirs or Creditors, without Exception of Minority, not Comparing or conceiving themselves wronged, have only 3 months to pursue the Receiver of the price and their heirs, Reserving to the Minor relief as records. The purchaser may upon will to the Lord representing that he hath paid or Consign'd the price in manner aforesaid, get up his bond and security given for the price to be cancelled. act 60. Where no Buyer is found, act 20 Sept. 2 Par. H. & W. Allowed the Lord to divide the estate among the Creditors according to their several rights and Diligence, and to determine the Nature of life rent affecting the same. Appraisers and Judges coming in pari passu get in the case of a sale share of the price Efferring to their debts: But if Division of the Land be made, have their parts of the Land according to the proportion of their share; and after appraisers or adjudicators are to raise in order according to the title of their rights. Several persons having right to the same appraising or adjudication, must choose by Lot. None can choose land out of the middle, but at a price: Nor will the Lord allow fractions of rooms, but only whole rooms to be chosen. The Excess of the price of what one gets more than his proportion is to be divided proportionably Stat. Lib. 3 Tit. 2 § 54. But such a Division among Creditors being very difficult, if not Impracticable, when there are some small debts, as was found in the case of the Creditors of Bruce or Kennet the Lord do sometimes upon application by the Creditors lower the price set upon the estate for encouraging persons to buy, and appoint a second roup for exposing it at that price 7 July 1709 Creditors of Mr Cleland Supplicants. A Division of a Debtors Land among his Creditors is ordinary and Exactly performed in England upon Commissions of Bankrupt.