

by these rights cannot Recourse upon the other Creditors whose rights or Diligences are posterior thereto, to make up what the Reducing rights Carried from them. *Stair lib. 4 tit. 35 § 29* 1698. *Carroll contra Creditors of Nicolson*. This in a Competition of Inhibiting adjudgers and simple adjudgers for Debts Anterior to the Inhibitions within year and day of one Another, and Annual renters whose rights were prior to the adjudications, but posterior to the Inhibitions: the Inhibiting adjudgers were allowed fully to draw such a share as would have belonged to them if there had been no Annual rents granted posterior to their Inhibitions, and had right to the remainder of the fund in their Inhibitions before the Annual renters drawing a share 20 January 1709 *Creditors of Lang, four Com. acting.* The Estate was the 6000 pound being to be divided between the Inhibiting and simple adjudgers, of each 2000 pound, and an Annual rent corresponding to the like sum anterior to the adjudications but posterior to an Inhibition used by one of the adjudgers; the Annual renters got 2000 pound, the simple adjudger 1000 pound, and the Inhibiting adjudger 3000 pound. Because the 4000 pound of Annual rent left but 2000 pound of the estate free to both the adjudgers, 1000 pound to each, whereby the Inhibitor wanted 2000 pound of what he should have had but was not allowed in Competition, which therefore it made up to him out of the Annual renters share. This standard in the Ranking of Creditors is founded on sufficient reasons. For, if the Inhibiting adjudger can receive advantage more than he can have lost, by the Contracting of debts after his Inhibition: Nor doth the Security or Diligence of posterior Creditors Vice the Annual renters, Accrue to him as come in their place, whose Inhibition doth only discharge the granting of rights prejudicial thereto, and doth not communicate or convey the right Inhibited. But being the simple adjudgers were Contracted before the Inhibitions, and their adjudications come in pari passu with those led by the Inhibitors, the latter hath no farther benefit by the Inhibitions, than to draw their shares off that proportion of the Common burden of the Annual rents that would otherwise affect them, as if they were Annual rents were not in being; for the Inhibitors have no farther prejudice by the Annual rents, but only by the Concurrence of the Coadjudgers: If had the Annual renters Renounced their Annual rents before the Competition, must not the Inhibitor be content to take their equal shares with the simple adjudgers, or might not the Annual renters by by all the adjudgers are Ranked, and then require their Money from the

simple adjudgers; which the Inhibiting adjudgers who derive no right from them cannot hinder? To this answer, that the Inhibiting adjudgers came fully in place of the posterior Annual renters, and that the rights of Annual rents Accrue to them, the Annual renters after the Inhibitors have drawn the share due to the former, cannot seek the same over again out of the estate in prejudice of the simple adjudgers, because that were twice payment. *9 of 10 a gathering of what the Annual renters lose in a Competition with the Inhibiting adjudgers, can come off the simple adjudgers: Because no person who Invents evictions thro' his own fault or deed, had any recourse except upon the party injured against such as were innocent the *responsoria iniqua non alteri dant, no ubi in per alium iniqua conditio. In pari, ubi est, that the Annual renters suffer only by their own fault in taking right of Annual rent after the Inhibitions. If the Inhibitors were allowed more benefit in the Annual rents than they had in their own provisions with respect to the Coadjudgers; the Inhibitions would not in the last end be Annual rents, were by they were posterior, but only the Annual simple adjudgers who doth nothing further by their own fault, than the Annual renters thrust forward to repair what they want in the Inhibitions: and give full satisfaction per se. If it be objected, that the Inhibitors against the Coadjudgers, Vice the Annual renters, viz. the Annual renters, cry *Nulla majus Vice* to the simple adjudgers, as they in the Annual rents without recourse. The answer is, that the said Inhibitors are not in a better condition, in the possession of rights depending upon one another; and had were every one's right independent, and Contrived by Justice for wisdom sake: especially as in that case.**

It was not sustained as a reason to derive a Decree of Ranking, that after the date thereof the Interests of some Creditors were taken in and Ranked without putting up a New Decree in the Minute Book. In respect by the taking and Ranking of these Interests, there was no New Scheme or Class made in the said Ranking, but they were only Joined to the Classes of the Creditors formerly Ranked 20 January 1714 *Lockhart of Carnwath contra Creditors of Carsewell.*