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signation; and so replieth, that whatever fraud or collusion betwixt the rebel and the donatar hath been used, yet cannot be obtruded to him who is true creditor, as they are, and be not partakers of the fraud; and so that he ought to be preferred, having lawfully purchased the King's right; notwithstanding of which reply the exception was admitted; for the Lords found the subsequent assignation could not prejudge the preceding lawful diligence used by the creditors before the assignation, but, that the cause behoved to be considered and disputed now as it might have been betwixt the creditors and the donatar's self, at the time of the arrestment; at which time the allegiance would then have been admitted against the donatar, and so ought to be so discount against the assignee.

Act. *Nicolson* younger.Alt. *Laurie*.Clerk, *Gibson*.*Durie*, p. 90.

\* \* \* Haddington reports this case :

JOHN BELSHES being addebted to William Douglas of Tofts, in the sum of L. 5000 merks, and pursued to make the sum forthcoming to Mr William Douglas, David Mitchel and others creditors to Tofts, according to their arrestments; William Barclay, and John Erskine of Bagaine, assignees to the gift of Tofts' escheat, were admitted, and alleged that they should be pursued as assignees to Tofts his escheat, and to the particular declarator thereof, the horning and gift being long anterior to the arrestment. It was *answered*, that the gift was simulate, purchased by the rebel upon his charges, together with the declarator, which was offered to be proven, according to the order prescribed by the act of parliament. It was *replied*, that the assignees were true creditors to Tofts, and were not partakers of the simulation, and so had good right; but because Mr William Douglas and David Mitchel had used their arrestments, intended action, and prosecute it long before the assignation produced, their allegiance was found relevant against the assignees.

*Haddington, MS. No 2948.*1625. *January 26.* SIR ANDREW COWPER *against* LADY HALTON.

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SIR ANDREW COWPER pursued Lady Halton younger as executrix to her husband, to make some arrested goods forthcoming. She excepted, that all was exhausted by lawful decreets obtained against her. *Replied*, That he could not be prejudged, who had arrested long before these decreets in her own hands, and that therefore she was *in pessima fide* to pay any other with that gear; and where she alleges a necessity inforced upon her. *Answered*, she could have had recourse to a double pouding, whereby she might have freed

herself from all danger. This being hotly reasoned, and many thinking that an arrestment did so really affect the goods, that it could be never frustrated by any decret obtained by a third person, the arrester not being called there-to; nevertheless, the exception was admitted, because it was thought, that in a donble pointing the other creditors who had used greatest diligence, would be preferred before the arrester.

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● Spottiswood, (ARRESTMENT) p. 16.

\*\*\* See Durie's report of this case No 52. p. 3865. voce EXECUTOR.

1628. July 26.

REULL against L. AITON.

IN an action to make arrested goods forthcoming, Reull *contra* L. Aiton and his tenants, who were convened to make the farms addebted by them to their master, forthcoming to him, as arrested in their hands at his instance, for satisfaction of a sum contained in a decret, obtained by him against their said master, and one who was made assignee to the L. Aiton's liferent, by the donatar thereto, and in and to the decret of general declarator obtained by the donatar thereupon, compearing and admitted in this process, for his interest, and which assignee having raised a special declarator against these same defenders, for payment to him of their same farms libelled, in respect whereof, he *alleged*, that he ought to be preferred to the creditor pursuer; and the pursuer proponing sundry arguments of simulation against the said gift, and the assignee *answering*, that they could not be received against him the assignee, albeit they might be received against the donatar's self, if he had not been denuded, seeing any simulation betwixt the donatar and the rebel, whereof the assignee was not partner, could not be now obruded to the said assignee; the LORDS found, seeing the pursuer had arrested the said farms libelled, before the donatar was denuded thereof by this assignation excepted upon, that whatsoever allegiance of simulation could have excluded the donatar's self, after the laying on of the arrestment by the pursuer, if the donatar's self were compearing, and not denuded, the same ought to be received now in the like manner, against the assignee constitute, after the arrestment.

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Found in conformity with Douglas against Belshes No 29. p. 8347.

Act. ———

Alt. Belshes. Clerk Hay.

Fol. Dic. v. I. p. 554. Durie, p. 394.

1665. November 23. MR JAMES CAMPBELL against DR BEATON.

DR BEATON being infest in certain lands, wadset by the Laird of Balgillo, does thereafter, by a minute, take an absolute disposition thereof, for a price expres-

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After a sale of lands, arrestment was