

And yet it was never thought that an arrestment could obstruct a poinding. The judgment, however, is right upon a principle of equity, that undoubtedly moved the Judges, though it was not brought into the reasoning, namely, That an inchoated attachment by one creditor ought to bar all others; which is laid down and enforced in the principles of equity.

*Fol. Dic. v. 3. p. 151. Sel. Dec. No 257. p. 329.*

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S E C T. II.

Arresters with Appriseres and Adjudgers.

1623. February 14. L. SALTCOATS *against* BROWN.

THE L. Saltcoats having arrested the mails and duties of a tenement of land pertaining to his debtor, and pursuing to make the same forthcoming, compeared one Brown, and *alleged* that he ought to have the said mails and duties, because he had comprised that tenement long before the arrestment, whereby he became in the heritable right in the land, and consequently ought to be preferred to be answered of the duties thereof.—THE LORDS prefer the arrester, by virtue of the sentence, notwithstanding that the comprising was also a sentence, and that it preceded the arrestment; because there intervened a great space betwixt the comprising, and before the arrestment, during the which whole space neither had the comprising obtained sasine, nor yet since was he seased; neither had he done diligence to recover sasine, nor used any other diligence all that intervening time, upon the comprising, without the which he could not be found to have a real right; and so repelled his allegiance founded upon his comprising.

Clerk, *Hay.*

*Fol. Dic. v. 1. p. 179. Durie, p. 46.*

No 9.

An arrester of bygone annualrents was preferred to a prior appriser of an infeftment of annualrent, the appriser having been *in mora.*

1627. December 13. TENANTS OF DRYUP *against* SHERIFF OF FOREST.

IN a double poinding, at the instance of the tenants, possessors of the lands of Dryup, who were distressed for the duties of the said lands by the Sheriff of Forest on the one part, who had comprised the said lands, for a just debt, from Scot of Dryup, and, conform to the comprising, was heritably infeft in the same lands divers years before the crop 1626, which was now drawn in question; and

No 10.

An appriser infeft, preferred to a subsequent arrester, although the appriser had suffered

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the debtor to  
retain posses-  
sion for many  
years.

which duties of the crop now controverted he had arrested, and so craved to be answered of the samen; and, on the other part, they were craved by another creditor to the said Scot of Dryup, who, upon a registrate bond, had charged and denounced the debtor, and had arrested the saids duties libelled, long before the Sheriff's arrestment.—THE LORDS pteferred the compriser, who was infeft, as said is, to the creditor arrester, albeit the creditor, who had arrested, claimed preference, as doing more timely and lawful diligence than the compriser, seeing, divers years being past after his comprising and infestment, he had suffered his debtor to retain the possession of the lands comprised, and had done no diligence upon his rights to recover possession, as he might have done, which is a great presumption of simulation, and could not therefore give any preference to him against this arrester, who had done all which was necessary of law to recover his payment; notwithstanding whereof the compriser being infeft, as said is, was preferred, and the retention of possession by the debtor was found no impediment to this preference.

Act. Scot.

Alt. Stuart.

Clerk, Gibson.

Fol. Dic. v. 1. p. 179. Durie, p. 320.

1628. December 2.

CUMING against CUMING.

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FOUND, that an arrestment of farms cannot be of force, being made before the term of Martinmas, if *medio tempore* the lands be comprised, and the compriser infeft before the term.

Fol. Dic. v. 1. p. 179. Kerse, MS. fol. 235.

1628. December 13.

HUNTLY against HUME.

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Found in con-  
formity with  
the above.

IN a triple poinding, Huntly against Hume and L. of Renton, the lands of the common debtor being comprised by a creditor, viz. Renton, and he being infeft thereupon before the term of Whitsunday, and before the comprising, another creditor having arrested upon his sentence, that term's duty, owing by the tenant, possessor of the land, to the master, who was the common debtor, the arrestment being execute before that term of Whitsunday came, whereat the debtor was obliged to pay; and, while the term was running, the arrestment was laid on, and, after the term came, he obtained sentence, discerning that term's duty to be made furthcoming, whereon the question being drawn in by the tenant, if he should be subject to pay to the arrester or to the compriser; —THE LORDS found, That the compriser being seased before that term, ought to have that term's duty subsequent after the sasine, and not the arrester, albeit the arrestment was execute before the comprising, whereupon the sasine pro-