

## C O M P E T I T I O N .

---

### S E C T . I .

#### Arresters with Poinders.

1611. *June 5.*     WRIGHT *against* THOMSON and ARCHIBALD.

**A** NE debtor being obliged to twa or more creditors, wha has decreets or re-  
registrate bonds against him, gif any of them arrest his guidis in any man's  
hands, and the other creditour poid the same guidis, the party in whais hands  
the guidis were, will not be halden to make them forthcomand to the arrester.

*Fol. Dic. v. 1. p. 178. Haddington, MS. No 2. p. 194.*

No 1.  
Arrestment  
does not bar  
other credi-  
tors from  
carrying off  
the goods by  
poin ding.

---

1634. *July 29.*     HUNTER *against* WILLIAM DICK.

**O** NE Hunter, arresting in William Dick's hands some wares pertaining to  
James Spence his debtor, and pursuing to make the same furthcoming, and re-  
ferring the summons to the said William Dick's oath, who granting the having  
of the wares, and the being thereof in one of his cellars in Leith the time of the  
arrestment, but declared that one Thomson, another creditor of the said Spence,  
had poided the same out of his cellar, by virtue of a sentence, and intromit-  
ted with the same; and the pursuer *answering*, That after his arrestment, he  
ought not to have suffered any other to have intromitted with the said goods  
arrested, to his prejudice, but should have suspended against both parties, that  
they might have disputed their rights, which of them should be preferred;—  
THE LORDS found, That a prior arrestment was no impediment to any other  
creditor to execute his sentence, by poiding the same goods arrested before,  
and that the person in whose hands the goods were arrested, had neither reason,  
nor any necessity to have stayed the poiding, nor to have suspended upon  
double poiding; for no deed was done by him, to give any advantage to the  
one party before the other; for if any sums of money, or other thing had been

No 2.  
Found as  
above.

No 2. in his hand, which he had given out of his hands without order of law, that would have been done upon his own hazard and peril ; but here, where there was no accession of any fact done by him, in whose hands the arrestment was made, to further the poinder, which pointing he could not stay ; therefore the arrestment was found could not make him liable to the arrester ; but reserved to the arrester to pursue him who had pointed, for rendering or repeating of the goods, *prout de jure*.

Act. *McGill & Sibball.*

Alt. *Nicolson & Stuart.*

Clerk, *Scot.*

*Fol. Dic. v. 1. p. 178. Durie, p. 735.*

1535. *March 11.* DICK *against* SPENCE and THOMSON.

No 3.  
Found in conformity with  
the above.

WILLIAM DICK having certain goods belonging to Spence, a bankrupt, in his hands, which being arrested by one Hunter, creditor to the said Spence, the said William is cited upon the arrestment, to make the goods furthcoming ; and after that arrestment and citation, Thomson, another creditor of the said Spence, having, upon his bond registrate against Spence, by virtue of the Lords' letters, pointed the same goods, out of the said William Dick's cellars in Leith, where they were the time of the arrestment preceding, and also at the time of the pointing ; the said William being convened by the arrester, to make the arrested goods furthcoming, and he defending, that the same were pointed from him, as said is ; likeas the charger compeared, and in respect of his pointing claimed preference to the arrester.—And the arrester *alleging*, That he ought to be preferred to the poinder, in respect to his anteriority of diligence, in his prior arresting, and citation also of the haver before the pointing, which so affected the goods, that the haver could not have suffered any other to point in his prejudice thereafter ; seeing if that were allowed, it should tend to make all arrestments unprofitable, and should give liberty to the haver to elide all diligence of the creditors, and to give way to the payment of any other creditors he pleased to prefer, which were against justice ; for the haver should not have suffered the poinder to enter within houses to point, while his arrestment had been tried, whereupon he was summoned before the pointing, as said is, and the collusion of the haver with the poinder is manifest herein ; likeas he offers to prove by William Dick's oath, that by express paction betwixt him and the poinder, they convened and agreed together, that he should give way to the poinder to point, and make open doors to him for that effect, to the effect he might be preferred, and the other creditor prejudged, which was not lawful to him to do ; and the time of the said arrestment, he took the poinder expressly bound to warrant him of the said prior arrestment, and of all danger which he might incur thereby ; and after that agreement, the said William Dick sent down his servant to make his cellars open, that the poinder might have free access thereto, and so