

1665. *January 10.* SIR WALTER SEATOUN *against* ALEXANDER JACK.

IN a competition betwixt Sir Walter Seatoun, who was creditor to one Caple, a merchant, for custom and excise, and who had arrested and recovered decret before the bailies, for making furthcoming, upon the 22d of August 1663: And Alexander Jack, another arrester, and who likewise had recovered decret, for making furthcoming, upon the 20th August 1663, a day before the other.—THE LORDS, notwithstanding, preferred Sir Walter Seatoun, in regard he had arrested first, albeit his decret was a day after; and that he had a privilege, in respect of the nature of the debt.

Fol. Dic. v. 1. p. 60. Newbyth, MS. p. 17.

No 154.

A first arrestment preferred, though the decret of furthcoming was a day after another. The first was reckoned a privileged debt, being for custom and excise.

1666. *February 1.* CUNNINGHAM and LYLE *against* WALLACE.

JAMES MASON being debtor to Colonel Cunningham in a sum of money, and being likewise debtor to Arthur Lyle, both of them arrest in James Wallace's hand, certain sums, wherein the said Wallace was debtor to Mason. Colonel Cunningham *alleged*, He ought to be preferred, because his arrestment was made upon the 29th November, and Arthur Lyle, his arrestment, upon the 30th.—To which it was *answered* by Arthur Lyle, That he ought to come in *pari passu* with the Colonel, because, albeit the Colonel's diligence was a day before his, yet their decreets were pronounced upon one and the same day.—THE LORDS preferred Colonel Cunningham, being the first arrester, albeit but a day before Lyle's arrestment, and that both decreets were on the same day.

Fol. Dic. v. 1. p. 60. Newbyth, MS. p. 54.

No 155.

The first arrestment was preferred; the decrees of furthcoming being both on one day.

1667. *November 23.*

SIR ROBERT MONTGOMERY *against* ALEXANDER RANKIN.

SIR ROBERT MONTGOMERY having obtained decret against Antonia Brown, as representing Sir John Brown, her father, for 2000 merks, arrests the price of a chain due to Antonia, in the hands of the Lord Melvil, and pursues to make furthcoming; compares Alexander Rankin, and produces a decret obtained against Antonia, and thereupon an arrestment by the Sheriff of Fife's precept, and a decret of the Sheriff thereupon, in July last, the arrestment being in the same month, and craves preference, because he had the first complete diligence.—It was *answered*, That Sir Robert having first arrested in March last, and first intended process thereupon before the Lords, and having insisted therein the last Session, was kept off by the compareance of the Lady Cullerny, who also pretended right to the chain, and had failed in no diligence, and therefore ought to

No 156.

A first arrester preferred, though a second had first obtained decret of furthcoming. The second had taken his decret before the sheriff; the first was proceeding before the Court of Session, where process is more tedious.

No 156.

be preferred to a posterior arrestment, albeit it have the first decret of an inferior court; both arrestment and citation being after his, for he having affected the sum by an arrestment, the matter became litigious, and no posterior diligence, nor sentence of an inferior court, could exclude him, he using all diligence before the Supreme Court, and not living within the Sheriff's jurisdiction; and the Sheriff's decret being only in absence, otherwise no process upon any arrestment before the Lords can be secure, but others may anticipate them, by obtaining decreets before inferior courts, which are far sooner obtained.—It was answered, That it was not the arrestment, but the sentence to make furthcoming, that transmitted the right, as being a judicial assignation, and therefore the first decret is preferable; for, as poiding might have been used upon the Sheriff's precept, notwithstanding of a prior arrestment, and dependence before the Lords, so must the Sheriff's decret, which is equivalent, have the same effect; and Sir Robert ought to impute it to himself, that took not the shortest way in pursuing before the Sheriff.

THE LORDS found the first arrestment, pursued before themselves *sine mora*, and the first citation, preferable to a posterior citation, and arrestment; though obtaining the first decret, and therefore preferred Sir Robert Montgomery, and would not bring in the parties *pari passu*, the first arrestment and citation being several months before the other.

Fol. Dic. v. 1. p. 60. Stair, v. 1. p. 488.

. The same case is thus noticed by Dirleton :

RANKIN *against* SKELMORLIE and DUNLOP.

IN a double poiding at the instance of the Lord Melvil, there being a competition betwixt two creditors of Antonia Brown, daughter and heir to Sir John Brown :

THE LORDS preferred Skelmorly the first arrester, though Rankin had obtained a decret to make furthcoming, and had completed his diligence; and alleged, that an arrestment is but an inchoate diligence, and doth not hinder any other creditor to complete, and do more exact diligence by poiding, or by a decret to make furthcoming, which, in debts, and *in nominibus*, are equivalent. The reason of the decision was, that Skelmorly had not only arrested, but had intented a pursuit before the Lords, to make furthcoming before Rankin; but processes before the Lords being more tedious, and the pursuer not master of calling, Rankin had taken advantage by obtaining a decret before the Sheriff in the interim.

Dirleton, No 110. p. 47.