

No 28. as being granted *a non habente*; and the debt in question, to which the heir had made up a special title by a precept of *clare* and infeftment, could be conveyed by him only.

THE LORDS preferred the assignee.'

For the Assignee, *Ferguson*.

For the arresters, *Lockhart*.

N. B. THE LORDS seemed to determine this case upon the want of title in the arresters, the trustees of William Wood's relict and children.

*A. W.*

*Fac. Col. No 50. p. 112.*

Douglas against Mason,  
*voce TRUST.*

\*\*\* See Douglas against Mason, 29th June 1796, *voce TRUST*, in which an arrestment and an assignation were ranked *pari passu*, where the execution of the former bore to have taken place between one and two, and the intimation of the latter between two and three of the afternoon of the same day.

#### SECT. IV.

##### Arresters with Annualrenters.

1670. February 1.

WILSON against RUSSELL.

No 29.

Rents due by a tenant were arrested after his removal from the lands. Found that an annualrenter who had done diligence, by which he might have pointed the tenant before his removal, was preferable to the ar-  
rester.

WILSON being infeft in an annualrent of the lands of \_\_\_\_\_, and having obtained a decret of pointing the ground thereafter, Russell being a creditor, did arrest the mails and duties in the tenants' hands which were due to the master; and pursuing to make arrested goods furthcoming, the tenant being removed off the ground with his whole goods, it was *alleged* for Wilson, That he ought to be preferred, because his decret of pointing of the ground was before the arrestment, and being a real diligence, did affect the whole duties payable to the master. It was *answered* for Russell, That the tenant being removed with the whole goods, such decreets and letters being only to point the ground and the goods thereon, could not affect him nor his goods.

THE LORDS did prefer Wilson the annuitant, and found, he having done prior diligence, whereby he might have pointed the tenant before he removed, albeit he did prejudice himself of all the execution against the tenant's goods, after they were off the ground; yet, *quoad* the duties payable to the master, for which he might pursue him *personali actione*, he was not prejudged from the benefit thereof by the tenant's removal; but, the decret of pointing of the ground, and letters thereof, being a real execution prior to the arrestment, made him preferable to the arrester as to the duties for which he was liable to the common debtor.

*Fol. Dic. v. 1. p. 178. Gosford, MS. No 241. p. 99.*