

1678. July 19.

WARROCK against BROWN.

No 14.
Execution of
arrestment
must be be-
fore witnes-
ses.

IN a competition, Brown having arrested, by an officer of the town of Edinburgh, by warrant of a bailie, but whose execution bore no witnesses, which was alleged to be the custom of the place; and within few days after, Warrock having arrested by a solemn arrestment, the execution whereof had witnesses insert:

THE LORDS preferred the posterior arrester, his arrestment being the most solemn and formal, though posterior.

Stair, v. 1. p. 637.

1704. January 7.

A. against B.

No 15.
Letters of ar-
restment and
summons of
furthercoming,
were sent off
to be execut-
ed together.
Notwith-
standing the
incongruity,
this was per-
mitted for the
sake of con-
venience.

ONE having obtained a decret against his debtor, he thereon raises letters of arrestment, and likewise a summons to make furthercoming, and sends them both to the country to be executed. When the action of furthercoming is called, it is *alleged*, No process; because it is raised before the arrestment was laid on, and so is *filius ante patrem*, and a nimious preposterous diligence; seeing by the order of nature the arrestment should precede, and when it is once executed, then the summons of furthercoming may be raised, and no sooner; and it shocks common sense and reason, to raise a libel narrating an arrestment, which is not yet *in rerum natura*.—*Answered*, There is nothing more ordinary, being much to the ease and accommodation of the lieges, and has no inconvenience following it. Suppose the parties dwell in Orkney, what an expence and loss of time would that be, first to send the letters of arrestment to lay it on, and when that is returned back to Edinburgh, then to raise the summons of furthercoming to be executed; whereas it is a great advantage to the people to send them both at one time, and first to give the copy of arrestment, and then the next day the execution of the process of furthercoming; even as the citations for the first and second diet are given at one time, and a charge to enter heir, and a summons on the passive titles founded on that charge may be given *simul et semel*.—*Rephed*, This is a clear inversion of our styles and forms, and may be prejudicial to the lieges; for, put the case, that one follows the regular course of law in arresting first, and then raising his summons to make furthercoming; another creditor, to prevent him, sends both his letters of arrestment and furthercoming together, and causes execute them at one time; this posterior arrester will certainly get the first decret of furthercoming, and crave preference to the other, though first *in cursu diligentie*; so he who observes form shall thereby lose his cause; and the transgressor, by his precipitation, shall *lucrari*.—THE LORDS considered the practice had grown up to near a custom, and might endanger the quarrelling of many diligences if rejected; and that, in such cases, *error communis* is allowed *jus facere quoad præterita, per leg. 3.*