

No 160.

debtor was *lapsus* or *vergens ad inopiam*; otherwise such arrestments passing of course *periculo petentis*, are not warrantable to stop the debtor's disposal of his moveables and fums before the term of payment; for inhibition reacheth not these; but the posterior arrestment was preferred by the Lords, as the more formal and legal diligence, as was lately done in the case of Charles Charters against Cornelius Neilson, No. 157. p. 811.; but the LORDS ordained Pitmedden to assign his security to the Paterfons. (See LEGAL DILIGENCE.)

*Fol. Dic. v. 1. p. 60. Stair, v. 2. p. 636.*

No 161.

1680. February 28. ROBERTSON against M'EWAN.

Two arresters competing, the LORDS preferred the last decret of furthcoming, because this arrestment was a month prior to the other, and the common debtor had made compearance and opposition against him, and suffered the other decret to pass.

*Fol. Dic. v. 1. p. 61. Fountainhall, MS.*

No 162.

A posterior arrester preferred, having obtained the first decret.

1685. March. MR WILLIAM LAUDER against MR DAVID WATSON.

MR DAVID WATSON having arrested, on the 28th November 1684, and executed his summons for the first and second diets, upon the 9th of December, and 7th January following, and called his summons the 16th of January; Mr William Lauder arrested the same debt upon the 10th of December, a day after the other's summons was executed for the first diet, and with great vigilance got his process first returned and enrolled, and a decret thereon pronounced against the defender, referring to the other arresters compearing, to be heard upon their preferences.

*Alleged* for Mr David Watson, That he ought to be preferred, because he had raised his summons before Mr Lauder's arrestment.

*Answered* for Mr Lauder, That he is preferable for having the first consummate diligence by decret; nor can it be alleged, that his decret was recovered by the common debtor's partial favour; and both processes are before the Lords, where the methods are equal, and the diligences are of the same kind.

THE LORDS preferred Mr William Lauder, and did not bring in the other *pari passu*.

*Harcarse, (ARRESTMENT.) No 89. p. 17.*

\* \* \* Fountainhall reports the same case thus :

THE competition betwixt Mr William Lauder, David Watson, and other creditors of James Clark of Wrights-houfes, on their arrestments in Mr George Arnot's