

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

hands, is reported by Harcarse; and the Lords prefer Mr William Lauder, as having the first citation, out-giving, enrolling, and decreet, in respect of his prior diligence, though the other creditors arrestments were prior in date, but their summonses for making furthcoming were some weeks posterior to his; for though of old, in such a case, they used to bring in arresters, who were not *in mora, pari passu*; yet now the Lords consider the arrestment only as an inchoate and incomplete diligence, and like an assignation unintimate; so that if a posterior arrester get the first decreet, (which answers to an intimation) they now prefer him.

Fel. Dic. v. 1. p. 61. Fountainhall, v. 1. p. 355.

1685. November. HAMILTON against THOMAS CRAWFURD.

ONE Hamilton having died two or three months after he had arrested, without having raised a furthcoming; and thereafter Thomas Crawford having arrested the same debt, and pursued a furthcoming before the Commissaries, wherein Hamilton's brother compeared for his interest; but Crawford was preferred, in respect the other was not then confirmed executor to his brother. Hamilton advocated the cause, and after the same was remitted, confirmed himself executor to his brother; upon which active title he obtained a decreet of furthcoming before the Lords, some months before Crawford got a decreet before the Commissaries. In a multiplepointing the Lords found, That Hamilton having done the first step of diligence by arrestment, and the last by obtaining decreet before Crawford, he ought to be preferred, although in the intermediate step he had been something negligent; Crawford, after the remit, having been guilty of supine negligence.

Harcarse, (ARRESTMENT.) No 90. p. 17.

1697. January 15. WIGHTMAN against SETON and COCKBURN.

CROGERIG reported Wightman, merchant in Edinburgh, against Alexander Seton, collector at Prestonpans, and Cockburn; being a competition between two arresters of some goods in Seton's hands, belonging to Gray their common debtor. Wightman's arrestment was two days prior to Cockburn's. Their decreets for making furthcoming were both in one day. Cockburn charges Seton to deliver them up before Wightman charges. Seton obeys the charge, without suspending on double pointing. Cockburn, for his further security, causes likewise point and apprise the goods after they are in his own possession, and upon all this diligence he craves to be preferred.—Wightman contended, he laid on the first arrestment, which was a *nexus realis*, and had obtained a decreet as soon as the other, and not being *in mora* thereafter, this transmitted the property of the goods to him. And for Cockburn's diligence, it was affected and

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No 163.

An arrester postponed on account of *mora* in carrying on his furthcoming.

No 164.

One party arrested two days before another. Both obtained decree on the same day. The goods were delivered to the second, and he caused point in his own hands. The first, notwithstanding, preferred.