

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

No 162.

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.