

No 164. collusive, Seton shewing himself evidently partial in delivering up the goods, being put *in mala fide* by Wightman's arrestment and decret. Neither does it import, that he was a naked *custos*, the goods being only in his hand as collector, and not as debtor; for he could not gratify one creditor to the prejudice of the other. And though Durie, p. 760. observes, 11th March 1635, Dick *contra* Spence, *voce* COMPETITION, that a party in whose hands arrestment was laid on, might suffer another to point the goods, yet there was no decret of furthcoming in that case; and if there be any partiality or collusion, the Lords use to reject such diligences, 20th January 1672, Bell *contra* Fleeming, Stair, v. 2. p. 52. *voce* PROOF.—THE LORDS found, Wightman being the first arrester, it made such an *onus reale* on the goods, he not having been negligent, that it gave him preference to Cockburn, notwithstanding he had the first possession of the goods.

*Fol. Dic. v. 1. p. 61. Fountainball, v. 1. p. 755.*

1705. June 28. GEORGE SUTIE *against* BARBARA ROSS.

No 165.

Two arrestments used on one day, the hour not expressed, ranked *pari passu*. The one not permitted to prove by witnesses, (who might mistake or forget,) that his was some hours prior.

GEORGE SUTIE and BARBARA ROSS having arrested in one day, and the latter having pursued her furthcoming before the Commissaries, and the former before the Lords; Sutie craved preference in respect he offered to prove his copy of arrestment was given some hours before the others, and he tabled his arrestment before an unquestionable jurisdiction; whereas Mrs Ross had pursued before the Commissaries, who were not judges competent in actions of furthcoming.

*Answered* for Barbara Ross: Where there is a concurrence of diligences in one day, and the executions mention not the particular hours when they were made, they are usually brought in *pari passu*: For witnesses may be apt to mistake or forget the hour; and therefore my Lord Stair requires the difference of three hours at least. As to the competency of the Commissaries, the same is *sub judice* not yet decided.

THE LORDS brought in the two arresters *pari passu*.

*Fol. Dic. v. 1. p. 61. Forbes, p. 18.*

No 166.

An arrestment upon a dependence, was preferred to a posterior arrestment upon a registered bond, the dependence being finished by a decree;

1710. June 14.

CAPTAIN BRODIE *against* JEAN M'LELLAN, Relict of James Bowden late Bailie of Edinburgh.

IN a competition of the creditors of the Earl of Sutherland, who had arrested in the hands of the Earl of Murray, as debtor to him; Captain Brodie claimed preference to Mrs Bowden, because his arrestment was anterior to hers.

*Alleged* for Mrs Bowden, She must be preferred, because her arrestment, though posterior in date to the Captain's, was laid on by virtue of letters of horning upon