

him lands to a greater value, *et debitor non præsumitur donare*.—*Answered*, This holds not in provisions from parents, which are ever reputed *distinctæ liberalitates*. But the LORDS found the contrary between the Earl of Lauderdale and Lady Yester, 2d Feb. 1688, *voce* PRESUMPTION; and 12th Nov. 1698, Sydserf of Ruchlaw, *IBIDEM*, conform whereunto the LORDS here reduced Phineven's bond, as implemented by the subsequent provision.

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in the reduction of it, but ordained to remain in the clerk's hands as a warrant of the process.

June 29.—THE Earl of Northesk having obtained a decret of reduction against his uncle Phineven, (9th February 1699,) of a bond of L. 40,000; he now gives in a bill to the Lords, craving the said bond may be given up to him to be cancelled.—*Answered*, Although a writ be declared null so as not to operate against the party, yet it may have other effects, as here it astructs the onerous cause of the disposition made by his father to him of his lands, and therefore cannot be given up.—THE LORDS considered, where a writ is declared false, there may be reason to order it to be torn and cancelled in their own presence, but where it is only found null, it is enough that it be in the clerk's hands among the warrants of the decret; though the reducer lies under the hazard, that as long as it is extant, he may be quarrelled in a reduction within 40 years. However, the LORDS refused the desire of the bill as extraordinary and unusual, and ordained the clerk to give it to neither, but to keep it among the records and warrants. See PRESUMPTION.

Fol. Dic. v. 1. p. 355. Fountainball, v. 2. p. 42. & 55.

1709. June 10.

JOHN MOIR Merchant in Stirling, *against* The CREDITORS of ALEXANDER JACK.

IN a competition for a debt due by John Moir of Craigarnal to Alexander Jack, betwixt John Moir merchant in Stirling, who had obtained a decret of furthcoming before the Stuart-depute of Monteith against Craigarnal, upon two debts due to him by Jack, and the other creditors of Jack who had assignations to the subject; the assignees repeated a reduction of the said decret upon these grounds, *1mo*, Nothing was produced for instructing the first debt of L. 55, but only a horning and execution of arrestment, proceeding on a decret of the Commissary of Dumblain, and not the decret itself; whereas a horning, tho' it sufficiently warrant arrestment, doth not instruct or constitute the debt, without producing the ground thereof. *2do*, The arrestment for the other debt of 250 merks was unwarrantable, being used upon a bond registered in the Stuart-court books of Monteith, containing a precept in the end thereof in these terms: 'Attour, ordains all necessary execution to pass hereon within six days, in due and competent form as effeirs, next after the charge hereby warranted to be

No 31.
A decree of constitution, obtained in an inferior court, found sufficient to warrant a decree of furthcoming.

No 31.

' given, is orderly given and expired.' Which precept doth not warrant arrestment, but imports only that horning, containing arrestment, may, after elapsing of the days of the charge given, be directed thereon. Nor is arrestment execution of a decret of registration, but a new diligence, requiring an express warrant, as letters under the signet, or a special precept by the inferior judge, for directing the officers and messengers in their execution, Stair, Instit. b. 3. tit. 1. § 24. ; Spottiswood, tit. ARRESTMENT, p. 17. as well as inhibitions, adjudications, and other legal executions require special warrants.

Answered for the arrester, *imo*, Horning, being the warrant of arrestment, is a sufficient title to found a furthcoming, without necessity to produce the bond or other ground of the horning, unless the same be specially called for. And in this case, the decret of constitution was not called for ; the principal debtor and the party in whose hand the arrestment was laid on, (who only had the interest to call for it,) being convinced of the verity of the debt. Besides, the objection is instantly taken off by production of the said decret of constitution. *2do*, John Moir was in *bona fide* to arrest upon the foresaid registered bond and warrant, because it is offered to be proved, that it is the constant custom within the Stuartry of Monteith so to do ; and though such a custom were unreasonable, the Lords are not in use to annul bygones, but only to declare what ought to be done in time coming.

THE LORDS found the producing the decret of constitution in the competition, sufficient to support the decret of furthcoming as to the L. 55 ; but sustained the objection against the arrestment for the 250 merks, and found that the same was unwarrantable.

Forbes, p. 330.

1744. November 28. The CREDITORS of BAILIE OGILVY Competing.

No 32.
To support a
decret-arbi-
tral, the de-
fender is not
bound to pro-
duce grounds
and warrants.

JOHN OGILVY, bailie-depute of Cupar in Angus, his lands were adjudged by some of his creditors before the Lords of Session, and by others before the Sheriff of Perth, within which jurisdiction they lay. Afterwards there was a submission entered into by Thomas Ogilvy merchant in Dundee, who had purchased the estate, the several creditors, the heir of the common debtor, and generally all having interest ; and the arbiter ranked the adjudgers *pari passu*.

The adjudgers before the Court of Session raised a reduction and improbation of the warrants of the decreets before the Sheriff, which did not appear, and attempted to set aside the decret-arbital, as proceeding on forged grounds ; the question was, If the presumptive falsehood from a certification, should have that effect ?