

No 168.

In respect the Lord Roystown's arrestment was prior to Brymer's, and that he had a decret upon a dependence before the competition, as also an assignation from Fraferdale to the subject arrested; therefore, the LORDS preferred the Lord Roystown. (*See CAUTIONER.*)

Aft. Col. M'Kenzie & Ro. Dundas.

Alt. ———

Clerk, Sir James Justice.

Fol. Dic. v. 1. p. 60. Bruce, No 23. p. 44.

1724. January.

NAIRN against BROWN.

No 169.

A DEBTOR in a furthcoming having made payment, was decerned to pay over again to a prior arrefter, who obtained no decret of furthcoming till after the said payment.

Fol. Dic. v. 1. p. 61.

1728. January 2.

Competition RICHARD WATKINS with MR THOMAS WILKIE.

No 170.

IN a competition among arresters, the LORDS found, in general, That arresters are to be preferred; according to the priority of their arrestments and their diligences thereon, albeit some of the arrestments were laid on before the term of payment of the debt arrested. As also, that they are to be preferred, according to the dates of their arrestments and diligences, when the term of payment of the debts, on which arrestments are used, are past at the time of the competition; notwithstanding that, at the time of laying on the arrestments, the terms of payment of some of the arresters debts were not come; or notwithstanding some of the arrestments were on dependencies, which were closed, and the debts liquidated before the competition.

Fol. Dic. v. 1. p. 61. Rem. Dec. v. 1. p. 193.

1729. February 15.

CAMPBELL against HOG.

No 171.

Arrestment on a bill, although bearing only *value in account*, preferred to arrestment on a dependence.

IN a competition betwixt two arresters, the one upon a dependence, the other upon a bill of exchange, the LORDS preferred the arrestment upon the bill, though the bill did not bear *value received*, but only *value in account*, because such a bill creates a valid obligation, and has *parata executio*; but found that the arrester must instruct that he is creditor to balance, and that his preference is to be restricted to the balance not exceeding the sum in the bill.

Fol. Dic. v. 1. p. 61.