

1733. *January.* M<sup>C</sup>INTOSH *against* FARQUHARSON of Achreachin.

A first arrester, who forbore to proceed in diligence, because he obtained from the common debtor assignation to the debt arrested, was not excluded upon the pretence of *mora*, but preferred to a posterior arrester who had done exact diligence. See No 159. p. 812.

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

No 172.

1738. *November 8.* LAIRD OF DUNDAS *against* ANTHONY MURRAY.

WHERE the executions of different arrestments are on the same day, and at the distance of little time, it is usual to bring them in *pari passu*, and not to allow a proof by witnesses to determine the priority. Yet, where any strong circumstance is expressed in the executions that may be a clear mark to the witnesses, such proof may be allowed.

Thus, where two executions were on the same day in the month of December, one whereof bore to have been at three o'clock afternoon, which was such a time of the day as must have been in full light, and the other to have been at five o'clock, which was such a time as day-light must have been gone, a proof, before answer, was granted.

*Fol. Dic. v. 3. p. 45. Kilkerran, (ARRESTMENT.) No 2. p. 36.*

No 173.

A proof by witnesses of the hour of arresting allowed, where some clear mark of distinction is condescended on.

1772. *February 28.* JEAN CAMERON *against* THOMAS BOSWELL.

THESE parties being severally creditors to Nisbet, used arrestments on the same day, viz. 20th February 1771; Miss Cameron in the hands of Alexander Hart singly, and Mr Boswell in the hands of Hart, and of several other persons as debtors to Nisbet.

Hart brought a multiple poinding, wherein Miss Cameron claimed a preference upon her execution of arrestment, which bore, that it was laid on between the hours of six and seven, whereas the execution of her competitor's arrestment bore, that all the arrestments at his instance were laid on between the hours of seven and eight afternoon.

Mr Boswell, on the other hand, contended for a *pari passu* preference; for, that there was not a sufficient interval between the two arrestments to ascertain the priority of Miss Cameron's.

THE LORD ORDINARY at first preferred Miss Cameron, but afterwards gave this interlocutor: 'December 11. 1771. Finds that there is not a sufficient distance of time mentioned in the executions of arrestments, for showing, with precision,

No 174.

In a competition between two arrestments used on the same day, one execution bearing, that the arrestment was laid on between the hours of six and seven; the other execution, that the arrestment was laid on between the hours of seven and eight afternoon; the priority found sufficiently ascertained to decide the preference.