

No. 23. 1745, Feb. 12. THOMAS GRANT *against* WILLIAM JONES.

JONES arrested betwixt twelve at night of Sunday, the 15th of May, and one in the morning of the 16th, and Thomas Grant arrested at five in the morning, and Jones arrested again at the same hour. President, Arniston, and I, doubted whether arrestment at midnight is legal. I moved another doubt, that the first arrestment depended on a few minutes, viz, Whether before twelve at night or after? They notwithstanding preferred Jones, seven to seven. Only the President had no vote. 26th February 1745, Adhered.

No. 24. 1745, June 9. CREDITORS OF GLENDONING *against* MONTGOMERY.

MACBIEHILL, as factor for the Earl of March, being creditor to Glendonning in a bill, sent it to the Clerk of Peebles to protest and register it, which he did at Peebles, though the bill was not payable there, nor the debtor nor his residence there; and in his protest mentioned a procurator compearing, and witnesses present, though neither was true. This protest was taken and registerate; 6th January horning was raised, and executed 6th May, but nothing further done till the day after he broke in October;—and then he pointed a number of sheep, which sheep he did not dispose of till the Whitsunday following. And the preceding November the other creditors arrested in Macbiehill's hands. And in the forthcoming, the above facts were proved, and the creditors insisted that the pointing being null and illegal, Macbiehill should make forthcoming to them, or value of them. We all agreed, that Macbiehill's *bona fides* ought to defend him against all personal consequences; but several of us thought, that it could not defend against restitution; others thought the sheep coming *bona fide* into his hands, he could not be bound to restore to the common debtor, without payment of his debt, and the same defence should be good against arresting creditors. The Lords found him not bound to restore till he be paid his debt. *Renitentibus* President, Minto, Tinwald, *et Me.* This passed the 9th instant;—and on a reclaiming bill this day, 14th June, we adhered. *Renitente* also Kilkerran.

No. 25. 1745, July 9. BLAIR *against* HENRY BALFOUR of Dunboig.

THE question was, Whether a common debtor's oath is good against an arrester pursuing a forthcoming, to prove a compensation in favour of the defender, in whose hands arrestment was used, notwithstanding the common debtor was insolvent? Munzie, Ordinary, had found it proveable by his oath;—and we Adhered, notwithstanding the decision 23d November 1725, Sir William Nairn.—*Renitente* Kilkerran.

No. 26. 1746, June 29. M'LEOD of Genzies *against* M'LEOD.

CADBOLL being charged upon our decret, sought out debts of the charger's, and purchased one; but being advised that compensation would not be admitted, caused arrestment to be laid in his own hands, and obtained suspension;—and a proof being allowed of the fact, the Lords this day found Cadboll liable in Genzies's whole expenses, which they