

1745. *January 11.*

NEILSON and RAE, and Others, Creditors of ROBERTSONS, Competing.

JAMES ROBERTSON, by his testament, disposed his whole moveable effects to Robert his uncle, for the behoof of his the said James's creditors in the first place, and the residue for the behoof of his wife and children. Of which disposition Robert having accepted, certain persons, to whom James and Robert were jointly and severally bound, did, after the death of James, raise horning on their bonds against Robert, and thereupon arrested not only in the hands of the debtors of Robert, but also in the hands of the proper debtors of James.—And thereupon having pursued furthcomings, it was *objected* by the other creditors of James, who had confirmed executors-creditors to him, That the arrestments in the hands of the debtors of James were ineffectual, having no other warrant than what was in the ordinary stile of a horning against Robert, viz. *to arrest, &c.* all goods pertaining to Robert, and of course the arrestments were only of Robert's effects. But so it is, that James's effects were not transferred to Robert for his own behoof, but only in trust; and therefore, without a process or decree against Robert as trustee, the arrestment of the effects of James was ineffectual.

This the LORDS 'repelled, and sustained the arrestments.'

It was considered, that even though such process had been pursued, and decree obtained against Robert, the form of the warrant and arrestment had both been the same as for the debt of Robert. Wherefore, as James's effects were disposed to Robert, and that James was jointly bound with Robert in the debts, which were the ground of the diligence, it was thought not necessary for the creditors to have any other warrant.

Fol. Dic. v. 3. p. 38. Kilkerran, (ARRESTMENT.) No 14. p. 43.

1750. *February 21.*ELIZABETH OLIPHANT *against* ARCHIBALD CAMPBELL.

WILLIAM SHIELLS being debtor to Elizabeth Oliphant, daughter of Mr James Oliphant of Langtoun, she arrested in the hands of Mrs Forbes, a debtor of his, and pursued a furthcoming before the Sheriffs of Edinburgh; and Mrs Forbes called, in a multiplepoinding, Archibald Campbell brewer in Edinburgh, a posterior arrester; who *objected*, That the pursuer's arrestment proceeded on a warrant contained in the summons of constitution; whereas the party ought first to have been cited, and then a warrant sued out for arrestment: Whereupon the Sheriff preferred the pursuer; and the cause being craved to be advocated, the LORD ORDINARY, 3d January, 'Remitted, with an instruction to sustain the objection.'

No 7.

Horning against a trustee, a sufficient warrant for arrestment on debts in which he and his constituents were bound conjunctly and severally.

No 8.

Arrestment sustained, proceeding on the warrant in a summons of constitution from the Sheriff, although the party was not cited, previous to the arrestment.

No 8.

Pleaded in a reclaiming bill: It is the constant practice before the Sheriff courts, to grant warrant to cite, and thereupon to arrest; and it is not denied the citation was given before execution of the arrestment.

Answered: The warrant for arrestment on a dependence, ought to be issued after the dependence is created by the citation; and so the practice frequently is before the Sheriffs, and constantly before the Court of Session.

THE LORDS remitted, with an instruction to repel the objection.

A&C. *Boswell.*Alt. *Macqueen.*Clerk, *Pringle.**Fol. Dic. v. 3. p. 39. D. Falconer, v. 2. p. 150.*

* * * Lord Kilkerran mentions the same case thus:

MRS FORBES, in whose hands several arrestments were laid by the creditors of William Sheills, pursued a multiplepoinding before the Sheriff of Edinburgh, wherein she called the two arresters, Elizabeth Oliphant and Archibald Campbell, and William Sheills the common debtor. In this process it was *objected* by Archibald Campbell to Elizabeth Oliphant's arrestment, That though prior in date, it was void, in respect it proceeded on a precept adjected to the will of the summons of constitution against her debtor Sheills; whereas precepts for arrestment on a dependence, can only be granted after a citation returned, as thereby the dependence is created. *2do*, He offered to improve the execution of the summons on which her extracted decree of constitution against Sheills had proceeded; both which the Sheriff repelled.

And he having complained by a bill of advocation, the ORDINARY before whom it came, 'Remitted to the Sheriff to sustain both objections.'

But she having reclaimed, the LORDS were of opinion with the Sheriff on both points. On the *first*, it being the common practice of inferior courts to issue the precept of arrestment in the summons for constitution, different from what is the form in processes before the Lords. On the *second*, because as Sheills had appeared in the process of constitution against him, and acknowledged the debt, and for which decree proceeded against him, it was not competent for Campbell, who neither was nor could be party in that process, to object to the execution of the summons on which the decree proceeded.

But a third objection being made in the answer to her petition, viz. That the arrestment was laid on eleven days before the summons of constitution was executed; the LORDS, for that reason, and that only, "passed the bill of advocation."

Kilkerran, (ARRESTMENT.) No 18. p. 46.

1772. *March 3.*WILLIAM RICHARDSON *against* MARTIN FENWICK.

No 9.
A bill being
duly protest-

THESE parties, severally, became creditors in recourse, in consequence of two bills drawn by John Bedford and son, in Leeds, upon E. Porter of London, both