

1745. July 11. MARY HAY, relict of BLAIR, and STEWART, competing.

BLAIR of Newton having obtained decree against the Lord Ruthven, for a sum due by his bill, and upon which he had raised letters of horning, containing warrant for arrestment in common form; did, by his testament, appoint Mary Hay, his relict, his executrix and universal legatary, and particularly conveyed to her this debt and diligence. She was accordingly confirmed executrix, and gave up in inventory the debt, decree, and horning; upon which she caused a messenger arrest in her own name in the hands of the Lord Ruthven's tenants; and they having raised a multiple-poining, wherein they called Stewart of Kincarrochy, who had intimated to them an assignation by Lord Ruthven to their rents; the question was, How far this arrestment, in the name of Mary Hay, was habile upon a horning raised in name of the defunct Thomas Blair?

And the LORDS having remitted to the keepers of the signet, to report what the practice was, they reported, that they never knew or had observed any precedent for an assignee or an executor's executing a charge, an arrestment, or poining in their own name, when the letters of horning, poining, or arrestment, warranting the execution, proceeded in name of the cedent or defunct; but, on the contrary, wherever the assignee or executor intended to prosecute a diligence in their own name, the uniform practice had been to expedite a new horning, &c. in name of the assignee or executor; and, with an apology for so doing, gave this reason for the practice, that in all these cases a messenger acts singly as the executor of the will of the letters, which he is strictly tied down to follow without deviation.

With which the LORDS being satisfied, "Sustained the objection to the arrestment, and preferred the assignee."

Fol. Dic. v. 3. p. 380. Kilkerran, (LEGAL DILIGENCE.) No 1. p. 331.

* * * The like found with respect to a poining in name of the assignee, upon a horning raised in name of the cedent, 7th December 1769, Fogo and Galloway against Scot, No 18. p. 3693. *voce EXECUTION.*

1751. February 28. RUSSEL against SCOT.

WHERE a bond is suspended, and the letters found orderly proceeded, no diligence can thereafter proceed upon the bond itself, but only upon the decree.

And accordingly, upon the complaint of Francis Russel, surgeon in Edinburgh, that Mr Scot of Scotstarvit had, without extracting his decree finding the letters orderly proceeded, charged upon the bond, the LORDS "Found the charge irregular, and recalled the horning and caption."

Fol. Dic. v. 3. p. 380. Kilkerran, (LEGAL DILIGENCE.) No 2. p. 334.

No 19.

Diligence raised in name of a cedent or defunct, cannot be executed in name of the executor or assignee.

No 20.