life, is not to be reckoned. *De minimis non curat prætor.* The case of Boswell is the straitest that can be. The aliment was L.200, and the interest of her own money supposed L.100. I propose that she should have L.200 for the half year. I would give as high a sum for mournings as was ever given. As to the jointure-house, it has as much *tractum futuri temporis* as lands or bonds heritable by destination. Besides, the executry must be summed up at the term after the defunct's death, which is incompatible with a *tractus futuri temporis.* The case of an obligation to pay a certain sum, is different from an obligation to pay an annual sum; the first is pure and clear, the second is casual and of unknown extent.

The Lords found the executor liable in the aliment to the term, and the mournings; the heir liable in an annual sum in lieu of a jointure-house. They afterwards adhered to the Lord Justice-Clerk's interlocutor, modifying L.300 for mourning, and L.50 *per annum* for a jointure-house; and of consent modified L.200 for aliment to the term.

Act. J. Boswel. *Alt.* D. Rae, R. M'Queen. *Reporter,* Justice-Clerk.

1767. *March 5.* WILLIAM ELLIOT and OTHERS, *against* GEORGE MALCOLM.

ANNUALRENT.

If due on sums arrested.

[*Faculty Collection, IV.* p. 383; *Dictionary,* 550.]

KAIMES. As the price of land bears interest, Why should not the price of stocking?

PITFOUR. The question as to interest has varied much of late years: formerly, a demand for interest was *strictissimi juris*; but now, when one is *lucratus,* he is thought liable for interest in equity. I do not know any case where the rule as to interest on the price of lands has been extended to moveables.

PRESIDENT. No practice has carried the demand of interest so far as is claimed in this case. Interest is due on a merchant's account because of a *mora*; but here the money was locked up, and Malcolm had it not in his power to pay it.

COALSTON. There is great equity that, where one retains my money, he should pay interest for it; but with us, in law, interest is not due unless *ex lege pacto vel mora*: nothing of this kind here.

AUCHINLECK. The money was to have been paid at the Martinmas after finishing the bargain. So there was a term fixed: had a bill been granted, there would have been a legal claim for interest. Interest would have been due had there not been a compearance for the creditors: *dies interpellit pro homine.* Why not so now when Malcolm reaped a benefit by the interpellation of the creditors.

PRESIDENT. The Court has never so far extended the maxim of *dies interpellit pro homine.* See case of *Lockhart of Carnwath* and *Walston.*

PITFOUR. I agree that the case of merchants' accounts does not apply: *dies interpellit* is not enough. Where then was the use of denouncing?

HAILES. Thinks interest is due from July 1766; for, at that period, the creditors called upon Malcolm to consign in the hands of a banker: and, if he had consigned, and the money had perished, the loss would have fallen upon the creditors, not upon Malcolm; and, as soon as they intimated their willingness to run the risk, he ought to have consigned. As he did not consign, he ought to pay interest at the bankers' rate of four per cent.

The Lords at first found no interest due, but afterwards, from the special circumstances of the case, found interest due at the rate of four per cent, from the Martinmas after the bargain, adhering thereby to Lord Stonefield's interlocutor.

Act. D. Armstrong. *Alt.* Ilay Campbell.

1767. *June* 26. MRS HELEN STEVENSON *against* COLQUHOUN GRANT.

COMPETITION.

Competition betwixt an arresting Creditor, who had obtained a warrant to sell the goods arrested, and a creditor who afterwards poinded.

[*Faculty Collection, IV. p.* 109; *Supplement, V.* 649. *Kaimes's Select Decisions, p.* 329; *Dictionary* 2762.]

PITFOUR. There are two points; one that an arrestment does not prevent a subsequent poinding, even although a forthcoming should be raised: the other, if the goods are *in manibus curiæ*, that no poinding can proceed. The two decisions in the petition relate to the case of the goods being *in manibus curiæ.* In the present case, I thought that, although there was an interlocutor of the Ordinary for a sale, yet that nothing had been done in consequence of this interlocutor, not so much as any intimation of the order. If a bankrupt debtor has cattle in my inclosures, and if an arrestment is used in my hands, and a forthcoming brought, but no intimation made to the debtor, if he sells, the purchaser is safe. Such were the principles on which I proceeded, but now I incline to be of a different opinion: Upon a reconsideration of the case, I do not think a poinder is in the same situation as a purchaser. A poinder is going on in a course of legal diligence; he may be stopt, though a purchaser cannot. Here there is, in effect, an interlocutor in the forthcoming, though not extracted; arresters of goods, *ipsa corpora*, ought not to be in a worse situation than arresters of a sum of money. The order to sell implies a decreet of forthcoming.

MONBODDO. I think that a purchaser of the goods would not have been safe, because the subject was litigious. But the doctrine of litigious will not apply to the case of other creditors. Although another creditor has inchoate diligence,