

1772. February 27. MRS JEAN CAMERON against THOMAS BOSWALL.

ARRESTMENT.

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

[*Fac. Coll.*, VI. 26; *Dictionary*, 821.]

AUCHINLECK. The law always prefers the prior arrestment; but there is difficulty in determining which is prior. Lord Stair has laid down a rule, that there might be a sufficient time to prevent mistakes as to priority.

PRESIDENT. *Ex facie*, the one arrestment is prior to the other: why should we not proceed upon that *ex facie* evidence until the contrary appears?

HAILES. Lord Stair speaks of three hours as establishing a preference; but, in the same place, he speaks of arrestment being preferred according to priority in time. His rule will generally be good: it is like the *biduum vel triduum*, within which, if a purchaser *cedit foro*, a bargain of moveables is vacated. If we do not prefer the arrestment which appears prior in date, we must heap presumption on presumption. We must presume, that the messengers mistook the hour of the evening, and that the watch of the one went too fast, while the watch of the other went too slow.

GARDENSTON. If there is evidence, from the execution, that the one arrestment was prior to the other, we must hold that to be the first till the contrary is proved. Although the numbers one and two are next to each other, they are in fact as distinct as one and a hundred.

PITFOUR. I could have wished that our predecessors had made a day the rule, instead of an hour. I never saw a decision upon a preference of *minutes*. The executions were *bona fide* made, but there is an uncertainty in the time. The Act, 1693, makes a preference depend upon the date of registration. As there are different registers in which a writing may be placed, the Court may be called to determine upon an inquiry into minutes. I think the *minimum* ought to be a full hour.

ELLIOCK. Here is a legal attestation of a fact. I must suppose that the officer of the law has attested a truth. An hour is a fixed portion of time as much as a day.

KENNET. Lord Stair speaks of three hours: perhaps this is too much. Later writers require such a space of time as that it may be certainly known *which* arrestment is prior in date.

On the 27th February 1772, "The Lords preferred Mrs Cameron on her arrestment;" altering Lord Kennet's interlocutor.

*Act.* Adam Rolland. *Alt.* R. Blair.

*Diss.* Kaimes, Pitfour, Kennet, Auchinleck.