

son, it was much founded on, in reclaiming against an interlocutor of Lord Monboddo. The above passed among the Lords on the occasion. The petition was refused without answers.

1776. February 21. TURNBULL *against* TURNBULL.

It is held to be a principle in law that one cannot approbate and reprobate the same deed. The same principle holds, even although there should be two deeds, if they are *partes ejusdem negotii*, and made with a reference to one another. This occurred February 1776, Turnbull against Turnbull. Patrick Turnbull executed two deeds *unico contextu*,—one of his moveables, another of his heritage, and died the next day. In that of his moveables he burdened the disponee with a legacy of £50 to his heir at law; but he having brought a reduction, *ex capite lecti*, of the disposition to the heritage and having prevailed,—and having afterwards insisted for his legacy, “The Lord Justice-Clerk Ordinary, found, (21st July 1775,) that the two deeds made one settlement of the defunct’s whole estate. That the pursuer could not both approbate and reprobate,—and having reprobated his uncle’s assignation of the tack, by his reduction, on the head of death-bed, he could not now claim the legacy contained in the other deed.”

To this interlocutor the Lords adhered, and gave the expense of extract, 21st February 1776.

Decisions cited for the defender:—the case of *Dundonald*, 20th February 1729; 1st February 1671, *Pringle*; 17th January 1758, *Cunningham*.

ARBITRATION. See DECRET-ARBITRAL.

ARRESTMENT.

1776. November 21. DOUGLAS, HERON, and COMPANY *against* CHARLTON PALMER.

In deciding a cause between Douglas, Heron, and Company, and Charlton Palmer; the Lords signified their opinion, that letters containing warrant for

arresting the debtor's effects, in common style, "*wherever they can be found*," was a sufficient warrant for arresting at market-cross of Edinburgh, pier and shore of Leith, although no special warrant in the horning was granted for that purpose.

As to summonses, the practice is, to put a special warrant for market-cross, pier and shore, into the summons; and without such warrant an edictal citation will not do. But the reason seems to be, that the will of a summons describes, specially, the mode of execution; it is the same as the other diligence where there is to be a charge; but as to arrestments, either on a horning or letters of arrestment, the warrant to arrest is indefinite, and therefore may be used in any form as the case requires.

It was objected to the execution of a summons of adjudication, that it was executed at the market-cross, pier and shore, although there was no warrant for it in the bill on which the summons proceeded, but only to cite in common form. The Lords repelled the objection. *Fal. 22d July 1747, Lord Braco against Brodie.*

1773. *February 25.* CREDITORS OF HEW MACKAILE.

THE housekeepers of the Session-house draw rent for the Creams in the outer part of the Outer-house. These rents are reckoned part of the salaries, and are drawn by them as such. The Lords found them arrestable, *25th February 1773.*

They had found so formerly as to macers' fees; *9th February 1681, Cunningham, observed by Fount.*

1777. *January 29.* DOUGLAS, HERON, and COMPANY *against* CHARLTON PALMER.

THESE parties, both Creditors of Campbell of Kilberry, laid arrestments in the hands of Robert Allan. The execution of arrestment by Mr Palmer, bore, that it was laid on 19th November 1774, betwixt the hours of ten and eleven at night. That by Douglas, Heron, and Company bore to be laid on the same day, but without mention of hours. The Lords preferred them *pari passu*, *29th January 1777.* The late hour of laying on Palmer's arrestment affected the decision, as the Lords could not well presume that Douglas, Heron, and Company's was later. But, as the arrestment of Douglas, Heron, and Company did not mention the hour, they preferred them *pari passu.*