

1751. *January 11.* The CREDITORS of ROBERT POW, Competing.

No 102.

A CREDITOR of Robert Pow arrested in the hand of his debtor, on a debt not bearing interest; and having denounced him after the arrestment, pleaded that the interest arising since the denunciation was secured; which was denied by the other creditors his competitors.

THE LORDS found the interest not secured by the arrestment.

D. Falconer, v. 2. No 180. p. 215.

*** See Burgh of Kirkwall against Inhabitants of Stromness.
Sel. Dec. No 92. p. 123. *voce* ROYAL BURGH.

Decree of furthcoming after the common debtor's death.

*** IN an arrestment upon a dependence, if the common debtor die before the claim be established against him by decree, the process must be transferred against his representatives; but, if decree be recovered against the common debtor himself, there is no necessity for transferring it after his death against his representatives; calling them alone is sufficient to found the arrester in his action of furthcoming; arrestment not falling, by the death of the common debtor, as it is does by the death of him in whose hands it is laid.

Fol. Dic. v. 1. p. 58.

1610. *March 8.* DEMPSTER against DINGWELL.

No 103.

HE who is made assignee to a contract, making arrestment of the debtor's farms in his tenant's hands, in the lifetime of his cedent, and of the debtor, may lawfully, after their decease, call the tenants to make the goods furthcoming, and needs to call no more thereto, but the debtor's executor *cognitionis causa*, and the tenants.

Fol. Dic. v. 1. p. 58. Haddington, MS. No 1856.

1611. *February 26.* CLARK against ERLE of PERTH.

No 104.

A MAN being bound by a registered bond for a sum of money, and his horse being arrested for the same, and himself, and the party in whose hands the horse

was, being called to make him furthcoming, the debtor dying bastard; the creditor summoned of new the haver of the horse in his hands, to make the horse furthcoming, and the King's Treasurer and Advocate for their interest: Which order the Lords found sufficient, because he had affected the horse by arrestment before the bastard's death.

Fol. Dic. v. 1. p. 58. Haddington, No 2179.

No 104.

1616. February 18.

JAMES STIRLING *against* LADY AULDBARR'S TENANTS.

FOUND necessary to transfer a summons to make arrested farms furthcoming, in respect of the decease of the party summoned for his interest, notwithstanding litifcontestation was made against the principal party called, and all farther probation renounced. But yet they ordained the tenants, who were called for the farms arrested, to compear to give their oaths, and assigned a day for that effect, and declared they would not give sentence till the process was transferred.

Kerse, (ARRESTMENT.) fol. 235.

No 105.
Found necessary to transfer a summons of furthcoming on account of the party's death, although litifcontestation had been made during his life, and the term for proving circumduced.

1624. January 14. LA. LANGTOUN *against* SIR JAMES DURHAM.

In summons of arrested goods, where litifcontestation is made, if the debtor who is called for his interest decease; THE LORDS find the process not transferable.

Kerse, (ARRESTMENT.) fol. 235.

No 106.

1624. February 26.

SPITTLE *against* SCOTT.

MR ALEXANDER SPITTLE having registrate a bond of 2000 marks, owing by Scott of Dryop, younger, to him, arrested certain goods and gear belonging to him in his father's hands, old Dryop. Afterwards, the young man being dead, he charged the father to make the arrested goods furthcoming, which was not sustained until he first transferred the decret in his heir's person.

Fol. Dic. v. 1. p. 58. Spottiswood, (TRANSFERENCE.) p. 340.

No 107.
Even where the debt was liquid, transference required. See Somervel against Herriot, No 110. p. 781.

1623. July 8. THOMSON *against* EDGAR.

In a pursuit by one Thomson *contra* Edgar, for making arrested goods furthcoming as belonging to umquhile Clement Edgar, debtor to Thomson the pur-

No 108.
Found necessary to have