

S E C T. II.

Diligence without Decree.—Diligence before the term of Payment.—
Diligence in name of an Assignee or Defunct.

1628. *March 5.* BINNIE *against* ROSS.

No 15.

ARRESTMENT may be raised upon a bond, without decree or dependence.

Fol. Dic. v. I. p. 537. Durie.

* * * This case is No 4. p. 675. *voce* ARRESTMENT.

* * * See a similar decision 7th February 1665, Graham *against* Bruce,
No 129. p. 792. *voce* ARRESTMENT.

1666. *December 6.* GEORGE LESLIE *against* The LORD LINDORES.

THERE is a bond of 3000 merks granted by umquhile Patrick, Lord Lindores, and his cautioners, to George Leslie, in *anno* 1616, to which George Leslie, the charger, has right by progress; who having recovered decret against umquhile James, Lord Lindores, as representing Patrick, the granter of the bond, did thereupon raise letters of arrestment, and arrested in the hands of Mr John Bain, sums of money wherein he was debtor to the Lord Lindores in *anno* 1657, and doth now pursue the said Mr John Bain to make forthcoming, wherein he calls James, now Lord Loindores, apparent heir to the said James, Lord Lindores, against whom decret was recovered. It was *alleged* for the defender, That there could be no process for making forthcoming, unless the debt were transferred by a decret of transferring against the Lord Lindores, as representing his father, by some other of the passive titles. This being a point of form, the LORDS found there could be no process for making forthcoming, unless the debt had been constituted by a sentence against this James, now Lord Lindores, as representing his father or his uncle, or otherwise that the pursuer had confirmed himself executor creditor.

No 16.
A process of forthcoming cannot follow but upon a decree, and not on an unregistered bond.

Fol. Dic. v. I. p. 537. Newbyth, MS. p. 86.

* * * See Dirleton's report of this case, No 111. p. 781. *voce* ARRESTMENT.