

No 44.
on a horning
denounced
and registered
at the in-
stance of the
cedent.

and registered, they assigned to James Young, who presented a bill upon the narrative of the assignation, craving a caption in his own name. But the Clerk to the Bills having refused to write upon it, Lord Eskgrove verbally reported the question to the Court, who ordered the diligence to be issued in the name of the assignee.

D. D.

Fac. Col. No 107. p. 245.

S E C T. VI.

Arrestment upon a debt *in diem*.—Upon a dependence.

1628. *January 12.* DOUGLAS and ACHESON *against* GILBERT.

No 45.
In a competi-
tion of arrest-
ments, a ci-
tation before
the term of
payment of
the debt ar-
rested, gave
no preference.

IN two actions to make arrested goods forthcoming betwixt Douglas and Gilbert Acheson, two creditors to Michael Gilbert, minister of North Berwick, who arrested in the goodman of North Berwick's hands some moneys addebted by him to the said debtor, and some victual for his stipend, and desiring him to make the same forthcoming; the LORDS preferred Acheson to Douglas, albeit Douglas had intented his action against North Berwick before Acheson, and had cited him before the other; likeas the day of compearance in his summons was past, before the other party had raised his summons, which the LORDS found not to be any cause of his preference, as the party alleged it ought to be; the reason whereof was, because this priority of his action was not found to be any more timely diligence than the other parties was, which was done after him; seeing that first diligence was raised, executed, and done before the term of payment came of the debt arrested, and the other posterior in time was found to have done all lawful diligence, which could be required, seeing immediately after the term of payment was come, he arrested, and upon the morrow thereafter he raised his summons; and now being in this action as far advanced as the other party was in his summons, that prior *nimia diligentia* could not give the preference to the other, who had omitted to do nothing, but had used all lawful diligence in due time, which could be profitably and effectually done; and therefore seeing his debt was anterior to the other creditor's debt, and his term of payment before the other party's term of payment, and that he had arrested first, and before the arrestment made by him who first cited; the LORDS preferred him, as said is, and had no respect to the said first citation. In this process many of the Lords were of the mind and opinion, that an action

to make arrested goods forthcoming, intended before the term of payment of that debt come, which is desired to be made forthcoming, albeit it desire the payment to be made only after the term of payment be past, is not a just and lawful diligence; but that another using diligence, and pursuing immediately after the term of payment, will be preferred to him.

No 45.

Act. Aiton.

Alt. Dunlop.

Clerk, Gibson.

Durie, p. 326.

1633. March 20.

SIMSON against WHITE.

In a competition betwixt two arresters of a sum that was liferented, to which there was no access till after the liferenter's death, the first arrestment being founded upon a bond bearing annualrent, was found to be a security for the subsequent annualrents, as well as those due before the arrestment.

No 46.

*Fol. Dic. v. I. p. 539. Durie.** * * This case is No. 34. p. 698, *voce* ARRESTMENT.

1675. February 4.

HALL and GALBRAITH against GRAHAM.

THE ship called the Wine-grape, mentioned in the case 17th December 1674, Gordon and Ludquhairn against —. *voce* PRIZE, being found by a decret of the Admiral not to be a prize; and thereafter the said decret being reduced upon a contentious debate *in foro*, a bill of suspension was given in, making mention, that the Lords having thought fit, during the dependence, the value of the ship being liquidated, the price thereof should be sequestrated in the complainer's hands, upon a bond to pay the sum therein contained to the captor and his owners, if they should prevail in the reduction foresaid; and that he was charged to pay the said sum, the process being now at a period by the said decret reductive, at the instance of an assignee; and that he could not pay the same until an arrestment made in his hands, at the instance of the Swedes the former owners of the said ship, should be purged; which arrestment was upon the dependence of a reduction, intended at the stranger's instance, for reducing of the said decret reductive; it was debated upon the bill, and amongst the LORDS, that the said decret being *in foro contradictorio*, was of that nature, that it could not be reduced; and it were of a dangerous consequence, that after decreets *in foro*, the people should not be secure, but upon pretence of the dependence of reductions of the same, that which was found to belong to them by such decreets, should be again liable to arrestment and to question-

No 47.

The Lords refused an arrestment on a dependence before themselves, the dependence being a reduction of a decret *in foro*.