

No 500.

sums to Fleming, who pursued Smith before the Magistrates of Aberdeen, and having obtained decret, did point the cloth, both in Williamson's hand, and in Fleming's own hand, for the same debts. At the advising of the cause it was *alleged* for Bell, That these decreets being posterior to the arrestment, and obtained by collusion, to prevent the pursuer's more timely diligence by arrestment, no respect ought to be had thereto, seeing the persons in whose hands the arrestment was made did neither intimate to the arrester, that a pursuit was moved upon the said debates, whereby Bell might have raised double pointing, nor did they raise double pointing themselves, which if they had done, he would have been preferred, and excluded any posterior diligence; for albeit pointing may be used after arrestment, yet where there is collusion by the person in whose hand the arrestment is made, to prefer one creditor to a more timeous diligence of another, that collusion can neither hurt that prior creditor, nor prefer the posterior; as if after arrestment laid on by the Lords' precept, and pursuit before them, another creditor should arrest by the precept of a Sheriff, or Bailie of a burgh, and obtain decret before them, before decree could be obtained before the Lords by the most exact diligence, if upon the said decree of the inferior court, the goods arrested were pointed, the party in whose hands arrestment was made, would not be thereby liberated, unless he had raised double pointing *debito tempore*, which might have prevented the pointing; much more in this case where the defenders assign their sums, that the pursuer's arrestment may be anticipated by pointing of the goods in their own hand. It was *answered*, That the defenders had done no wrong, to endeavour their own preference, the assignee having pursued no process against them, but against Smith the common debtor for payment, and thereupon had pointed.

THE LORDS found that the foresaid pointing proceeded by collusion in favours of the parties themselves, in whose hands the arrestment was made upon holograph tickets granted by the common debtor, which prove not their dates to be prior to the arrestment; and therefore notwithstanding thereof ordained them to make forthcoming, except in so far as concerned that piece of cloth that was hypothecated, prior to the arrestment, and allowed the sum upon which the impignoration was made.

*Fol. Dic. v. 2. p. 258. Stair, v. 2. p. 52.*

1674. November 7.

BOYD against STORIE.

No 501.

A DISCHARGE to a tenant sustained upon the master's bare subscription, and that against an onerous assignee, the tenant making faith, that he received the same from his master before the assignation.

*Fol. Dic. v. 2. p. 259. Stair.*

\*\*\* This case is No 297. p. 12456.