

years, and that he could not be ignorant of the true condition thereof; seeing not only his father, but his nearest friends and relations were bound, and they did take burden for them: and, albeit he did live long after majority, yet neither he nor his father did ever revoke the same.

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1677. July 13. SIR GEORGE MORISONE and his CREDITORS *against* DAME AGNES BOYD, his Lady.

IN a double poinding, raised by the Earl of Southesk, as debtor, by bond, to John Morisone, son to Sir George; in place of a bond, whereby the Earl of Caithness and the Lord Sinclair were debtors to the said Sir George for the like sum; by which bond Southesk became obliged to pay to the Lady the annualrent during her lifetime, as an aliment, and to the said John Morisone, the principal sum, after her decease; Southesk, being pursued for the annualrent at Sir George's instance, as likewise at his creditors' instance, as having arrested:—

It was ALLEGED for Sir George, That he ought to be preferred to the Lady for the annualrent, because it belonged to him *jure mariti*, and during his lifetime his wife could have no right as liferenter.

It was ANSWERED for the Lady, That, notwithstanding, she could have the only right; because Sir George, her husband, being resolved not to live *in familia* with his Lady, did, with consent of his son and her friends, provide her to the annualrent of the said sum for an aliment, with an express provision that none of his creditors should affect the same; and so neither he nor his creditors, by any diligence or arrestment, could take away her right, which was an aliment, and in law not arrestable.

The Lords, as to the husband's interest *jure mariti*, did prefer the Lady; upon that ground, That she being provided to an annualrent of that sum, for entertainment of herself and two children and servants, it was but a reasonable provision; and, therefore, during their separation, which was the cause of that aliment, he could not crave any part thereof *jure mariti*: but, as to the interest of creditors who were prior to the said transaction, that point was not decided, but remitted to some of the Lords to settle them.

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1677. July 18. JOHN MURRAY, Merchant in Edinburgh, *against* GEORGE MONTEITH.

IN a bill of suspension of a decret, recovered before the Bailies of Edinburgh, at the instance of Thomas Dewar, skipper of a ship called the Golden Crown of Burntisland; who being decerned to make forthcoming a sixteenth part of the said ship to John Murray, as creditor to Hector M'Kenzie, who was one of the owners; and who had given him an assignation for his payment to one-sixteenth part of the said ship, which he had intimated not only at the skipper's dwelling-house, but likewise at the market-cross of Edinburgh and pier and

shore of Leith; whereupon he craved preference, especially upon that ground, That he had the first complete diligence, not only by assignation, but having obtained decret: whereas the arrester had only arrested the said ship by an execution at the skipper's house; whereas, by the custom of the Admiralty, a ship could only be arrested in the harbour.

It was ANSWERED and ALLEGED for George Monteith, the arrester, That, notwithstanding, he ought to be preferred; because the assignation was not lawfully intimated to the skipper, who was out of the country, by letters of supplement at the market-cross of Edinburgh and pier and shore of Leith; but only by an order granted by the assignee himself: whereas the arrester had petitioned and obtained letters of supplement, by warrant of the Lords, and, by virtue thereof, caused execute the arrestment at the market-cross of Edinburgh and pier and shore of Leith. And, as to the arrestment, it was most lawful, albeit it was not upon the ship itself in the harbour; because the vendition of the ship being only in name of the skipper, who had granted a disposition only, with a bond to make forthcoming to the owners, the arrestment against the skipper was most lawful.

The Lords did prefer the arrester, as having executed the same, by virtue of letters of supplement, at the cross of Edinburgh and pier and shore of Leith; without which, they found that the assignee could not intimate, the skipper being out of the country: and likewise found, That the whole property of the ship being in the person of the skipper, who was only obliged to make forthcoming; an arrestment at his dwelling-house, market-cross, and pier and shore of Leith, was sufficient; albeit the ship itself was not arrested.

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1677. July 19. PATRICK MURRAY of KEILLER against JOHN DRUMMOND of MACHANIE.

IN a reduction of a right and disposition of lands, made by John Murray to Drummond of Machanie, by a minute, subscribed in November 1673, at the instance of the said Mr Patrick Murray, upon this reason,—That the pursuer had the same lands disposed to him by a minute from the common author, which was prior to Machanie's minute; and whereupon he had raised horning, and thereby declared him bankrupt; and so made Machanie's right to fall within the Act of Parliament 1621, against divours and bankrupts.

It was ANSWERED, That the defender's right could never be reduced upon that ground; because, albeit the minute whereby he had right was posterior, yet he, having first completed his right by public infestment, he ought to be preferred to the pursuer, who had nothing but a minute, whereupon no diligence was done for completing his right: and, as to the horning, it could not make the common author in the condition of a bankrupt, and so any right granted by him thereafter to fall within the foresaid Act of Parliament; because the pursuer was no just and lawful creditor to John Murray, the common author, as having lent him any sums of money, or being cautioner for him, or having undertaken any debts in contemplation of his minute; and, therefore, it could be no ground to reduce the defender's posterior right, and make it fall within