

1678. July 17. LORD PITMEDDEN *against* ROBERT and WILLIAM PATERSON.

THE double pointing between my Lord Pitmedden and Mr Robert and William Patersons, Regents, was this day decided. The case was a competition between two arrestments, both laid on upon money owing to the late Laird of Cromarty, who killed himself, and due by some merchants in Aberdeen, who had bought Cromarty's bear. Paterson's arrestment was a day or two prior; but it was ALLEGED for my Lord Pitmedden, *1mo*,—That he had an assignation to the money before their arrestment. *2do*, Although his arrestment was posterior, yet he ought to be preferred, even upon his arrestment, because the term of payment of the bond whereupon his arrestment proceeded was come and bypast, the time he executed his arrestment; whereas the term of payment of the bond whereupon their arrestment was laid, was not come, much less was it past, at the time the arrestment was executed. ANSWERED,—That the bond whereon their arrestment proceeded, was only a bond of corroboration; and, though its term of payment was not come, yet the term of the bond corroborated was long ago expired. *2do*, The Lords ordinarily, where intimations or arrestments are near to one another, use to divide the sum arrested, and bring them in equally, and *pari passu*. *3tio*, Pitmedden had a cautioner for his money, one Urquhart of Newhall, and so he would not lose a farthing, though they were preferred; whereas they had not another imaginable way of payment but by this arrestment; and they were content to pay Pitmedden, if he would assign against cautioner and all. REPLIED, to the *1st*,—Their diligence is nimious and preposterous. To the *2d*, He is not to capitulate. To the *3d*, It were unjust to assign against the cautioner, when he is paid out of the means of the principal debtor.

The Lords found that the posterior arrestment was preferable, wherever the term of payment of the bond whereon it proceeds is past; and in the first arrestment it is not past, albeit the term of the bond corroborated was come; and reserved to the cautioner to be heard why the bond should not be assigned against him.

It was ALLEGED for him, That he was content to satisfy Pitmedden, and so he must not assign against him; which was admitted. This was no new decision; for, on the *29th of July 1670*, in a case of *Cornelius Neilson against Charteris*, the Lords preferred the posterior arrestment, where the term of payment of the bond which was the ground of the arrestment, was past at the time of the laying on of the arrestment; and that, to a prior arrestment proceeding on a bond, the term of payment whereof was not come when the arrestment was used: and that practick has this farther singularity in it, that the term of the first arrester's bond was come and bygone, when they were competing for preference; which specialty the Lords regarded not. See July 1676, and 1st December 1683, *Gartshore*.

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