

arrestment, and the assignation made to Crawford was long after his arrestment.—It was *answered* for Crawford, That he had arrested before Birnie, and raised summons thereupon; but Rankine having assigned him to the debt and Mowat's bonds, he found no necessity to insist for a sentence; but now he produceth the first arrestment and summons, and thereupon craves sentence; which will prefer him to Birnie the second arrester.—It was *replied* for Birnie, That albeit Crawford had the first arrestment and summons, yet he hath done greater diligence, having insisted upon his summons, and made litiſcontestation, and the cause being now concluded, and advising, he ought to be preferred, or at least to come in *pari passu* with Crawford who had not insisted.

THE LORDS preferred Crawford, as having the first arrestment, and a process, whereupon sentence might now be pronounced.

July 19. 1673. In the competition betwixt John Birnie and Thomas Crawford, decided the 5th day of July instant, the LORDS found, that Thomas Crawford having the first arrestment and summons was preferable, albeit Birnie, the second arrester, was now ready to get sentence, and that the first arrester did not insist to get the first sentence, seeing he had gotten assignation from his debtor, and thereupon had obtained payment; and now having produced his summons, it was *objected* for Birnie, That upon the summons the first arrester could not have been preferred, because the summons was never continued, and he had done ultimate diligence.—It was *answered*, That Crawford having obtained assignation and payment, could not insist for further diligence, which therefore must supply as if he had done diligence, seeing it was without collusion; for if the debtor had not voluntarily paid, he would have insisted in diligence.

THE LORDS preferred Crawford as the first arrester, seeing there was no double pointing to put him in *mala fide*, by knowing of Birnie's arrestment.

Fol. Dic. v. 1. p. 60. Stair, v. 2. p. 203. and 217.

1678. July 17.

LORD PITMEDDEN *against* PATERSONS.

PITMEDDEN having arrested in the hands of merchants in Aberdeen; the price of some bear fold to them by Cromarty, Masters William and Robert Paterſons having arrested the same also; the merchants gave in a bill of suspension of double pointing, and both parties having compeared, the Lords appointed the cause to be discussed upon the bill, and did prefer Pitmedden, though the last arrester, to the Paterſons, because they arrested before the term of payment of their bonds for which they arrested, and Pitmedden's term was past, albeit several decisions were adduced, sustaining arrestments laid on before the term, to take effect after the term; so that such executions were not null, otherwise inhibition would be also null on the same ground, in respect that the Lords did not find the first arrestment null, but that the same might be sustained where the

No 159.
debt arrested,
not excluded
as *in mora*,
in competi-
tion with a
posterior ar-
rester, who
had done ex-
act diligence.

No 160.
Found in con-
formity with
Charters a-
gainst Neil-
son, No 157.
p. 211.

No 160.

debtor was *lapsus* or *vergens ad inopiam*; otherwise such arrestments passing of course *periculo petentis*, are not warrantable to stop the debtor's disposal of his moveables and fums before the term of payment; for inhibition reacheth not these; but the posterior arrestment was preferred by the Lords, as the more formal and legal diligence, as was lately done in the case of Charles Charters against Cornelius Neilson, No. 157. p. 811.; but the LORDS ordained Pitmedden to assign his security to the Paterfons. (See LEGAL DILIGENCE.)

Fol. Dic. v. 1. p. 60. Stair, v. 2. p. 636.

No 161.

1680. February 28. ROBERTSON against M'EWAN.

Two arresters competing, the LORDS preferred the last decret of furthcoming, because this arrestment was a month prior to the other, and the common debtor had made compearance and opposition against him, and suffered the other decret to pass.

Fol. Dic. v. 1. p. 61. Fountainhall, MS.

No 162.

A posterior arrester preferred, having obtained the first decret.

1685. March. MR WILLIAM LAUDER against MR DAVID WATSON.

MR DAVID WATSON having arrested, on the 28th November 1684, and executed his summons for the first and second diets, upon the 9th of December, and 7th January following, and called his summons the 16th of January; Mr William Lauder arrested the same debt upon the 10th of December, a day after the other's summons was executed for the first diet, and with great vigilance got his process first returned and enrolled, and a decret thereon pronounced against the defender, referring to the other arresters compearing, to be heard upon their preferences.

Alleged for Mr David Watson, That he ought to be preferred, because he had raised his summons before Mr Lauder's arrestment.

Answered for Mr Lauder, That he is preferable for having the first consummate diligence by decret; nor can it be alleged, that his decret was recovered by the common debtor's partial favour; and both processes are before the Lords, where the methods are equal, and the diligences are of the same kind.

THE LORDS preferred Mr William Lauder, and did not bring in the other *pari passu*.

Harcarse, (ARRESTMENT.) No 89. p. 17.

* * * Fountainhall reports the same case thus :

THE competition betwixt Mr William Lauder, David Watson, and other creditors of James Clark of Wrights-houfes, on their arrestments in Mr George Arnot's