

and apprising followed in this case, as soon as the trouble of the times would allow. *2do*, Where a debtor is bankrupt, any diligence is sufficient to hinder him to make a voluntary preference among his creditors; and there was no negligence in the pursuer to prosecute his diligence, by reason of the war and surcease of justice.

THE LORDS sustained the apprising as a sufficient prior diligence; found a formal inhibition a due diligence to hinder gratification out of moveables: But found, That this inhibition being null for not being duly execute, was not sufficient to afford the benefit of the act of Parliament. See INHIBITION.

*Fol. Dic. v. 1. p. 77. Harcarse, (ALIENATION.) No 151. p. 32.*

1688. February 3. LAURENCE GELLATY against STEWART.

ONE Stewart having arrested some goods belonging to Bennet his debtor, a bankrupt, after the said bankrupt had been charged, and denounced by Laurence Gellaty, and having raised a summons of furthcoming, he received the goods by virtue of a warrant, by way of disposition from the common debtor; Gellaty raised reduction of the said disposition on the act 1621, as being a gratification in prejudice of his more timely diligence.

*Answered*: The arrester being stopped in his furthcoming, which was a habile diligence, by the debtor's voluntary delivery, that must be considered equivalent to a decreet of furthcoming, otherwise no man could safely stop his diligence upon receiving payment, or delivery of goods.

*Replied*: By the act of Parliament, the defenders who used posterior diligence must refund the payment by partial favour, to the pursuer who used the first diligence.

*Duplied*: That part of the act is to be understood of posterior inhabile diligence, whereas the defender used the most proper diligence by arrestment; and had he proceeded to obtain a decreet of furthcoming, he would have been preferred to the pursuer upon the head of diligence; and the voluntary delivery, which prevented the decreet, is equivalent thereto.

THE LORDS, in this circumstantiate case, assilzied from the reduction, and preferred the arrester. But if the charger had proceeded to poind the goods, which would have been also habile diligence, and was stopped by the disposition and delivery sooner than the other's decreet of furthcoming could have been recovered, the Lords would have considered it. This decision seems irregular, horning being as proper and habile a diligence as arrestment.

*Harcarse, (ALIENATION.) No 153. p. 33.*

No 144.

No 145.

A person arrested the goods of a bankrupt, who voluntarily gave an order to receive them, so that there was no decreet of furthcoming. A reduction at the instance of a creditor who had previously charged with horning and denounced, is dismissed: A circumstantial case.