

- No 33. controverted, was arrested at his instance in this suspender's hands, and sensyne the registrate obligation transferred in the person of Hope, executor decerned to the said umquhile William, whereby he alleged that he ought to be preferred, both in respect of the anteriority of his debt, and greater diligence, to Hope.—THE LORDS preferred Hope to Dick, in respect that Hope had recovered the first sentence against the persons, who of the law represented Muirhead, their common debtor, and that he had done diligence also, by obtaining himself decerned executor to him, which gave him *jus praelationis* for his debt, seeing the decret and arrestment used against Muirhead in his own time by Dick ceased, nothing being done thereupon before his decease; and so the decret of registration, obtained while he lived, not being transferred, while after Hope's decret of registration, and that Hope was decerned executor, made Hope's diligence to be greater than his, and so to be preferred to Dick.

Act. Hope.

Alt. Stuart.

Clerk, Scot.

Durie, p. 58.

- No 34. 1681. *January 21.* RIDDELL *against* MAXWELL.

AN arrester pursuing furthcoming, after the common debtor's decease, was preferred to an executor-creditor of the defunct, who had confirmed the debt arrested, as *in bonis defuncti*, and had even gone so far as to obtain decret against the debtor in whose hands the arrestment was laid.

Fol. Dic. v. 1. p. 179.

* * * See The particulars of the case, No 113. p. 783.

- No 35.

Decided in conformity with Riddell against Maxwell, *supra*.

1688. *February.* HUME *against* HAY.

A DEBTOR having died after one of his creditors had arrested, another creditor confirmed the sum arrested, and competed in the furthcoming; but the LORDS preferred the arrester, the arrestment being a *nexus realis*, which could not be prejudged by the debtor's death, more than real rights of poinding the ground, &c. by virtue whereof goods might be poinded after the debtor's death, in prejudice of both an executor and donatar, (as was found in a pursuit before the Council, betwixt the Lady Hume and John Hay.)

Fol. Dic. v. 1. p. 179. Harcarse, (ARRESTMENT.) No 94. p. 18.