

1733. *January 19.*HUNTER *against* LEES.

No 66.

A person let a part of his cellar. He had tobacco in his own distinct part of it. The tenant sometimes kept the key : Found, that an arrestment of the tobacco in the hands of the tenant, while he had the key, was inept.

A MERCHANT, proprietor of a cellar in which he had hogsheds of tobacco, let out the half of the cellar to a neighbouring merchant ; and they had a common key, which sometimes the one and sometimes the other kept, as their purposes required. At a time when the key happened to be in the tenant's possession, an arrestment was laid in his hands by a creditor of the proprietor of the cellar, who had his own tobacco in that half of the cellar which was not let. In a competition betwixt the arrester and a voluntary assignee, whose right was posterior to the arrestment, the LORDS found the arrestment an inept diligence, because the arrestee was not custodiar of the tobacco, or in any proper sense a possessor, so as to be liable to any action for delivery or making furthcoming.

Fol. Dic. v. 1. p. 56.

1738. *February 21.*JOHN BINNING *against* MACDOUAL of Logan and his Curators.

No 67.

Arrestment in the hands of a minor, is sufficient, without serving it likewise against his tutors and curators.

IN this process of furthcoming, it was *objected* to the arrestment, That the same was void, and could not be the foundation of any diligence following thereon, seeing it was only served against the minor, and not executed at the market-cross of the head burgh of the shire where he lived, against his tutors and curators in general, nor against them in particular.

THE LORDS repelled the objection.

C. Home, No 89. p. 142.

1738. *July 4.*

Competition, RICHARD LOCKWOOD, &c. with WILLIAM WILSON.

No 68.

An arrestment, in the hands of a consignee, upon a lawful consignation, found preferable to a posterior one executed against the assigner.

SIR JAMES CAMPBELL of Auchinbrek, having purchased several adjudications affecting the lands of Kirnan, did, in virtue thereof, insist in a sale of that estate ; during the course of which, it was found, That Sir James was bound to communicate the eases he had got from the creditors ; whereupon a count and reckoning ensued, from which it appeared there was a balance due to Sir James ; and which balance Kirnan, by a doquet at the foot of an account, obliged himself to pay, betwixt and Martinmas then next : This sum he offered to Sir James ; but upon his refusal, Kirnan applied to the Lord Ordinary, craving, That he would authorise him to consign the money, which was accordingly granted, reserving the consideration of what effect it should have. In consequence of this interlocutor, Kirnan, on the 11th of November 1736, consigned the money in the clerk's