

No 175.

by Lord Bankton, b. 3. tit. 1. § 42. The Lord Ordinary, by his first interlocutor, found, that Isobel Wright was preferable upon her execution of arrestment, which bears the hours of five and six, to John Anderfon, &c. whose executions bear the hours of five and seven. But, upon representation and answers, the Ordinary pronounced a contrary interlocutor in the following terms: 'In respect of the special circumstances of this case; and particularly, that the arrestments founded on by both parties, were executed by the same messenger, some of them at Edinburgh, and others of them at Leith: Finds sufficient ground to presume, that the arrestments in Leith were first executed, and that they were all executed at the same time, viz. betwixt the hours of five and six of the 4th of October; and, therefore, alters the former interlocutor, and prefers the parties *pari passu*, on the fums in the hands of Bryce.'

Upon a reclaiming petition and answers, 'the Court adhered to the Ordinary's judgment;' being of opinion, that here there was no evidence of a priority, and moved chiefly by the circumstance, that, in this case, one messenger had executed all the arrestments, and before the same witnesses; and in whom it had been a gross breach of duty, having the diligence of different creditors in his custody, to have given any one of them a preference to the other.

*Act. R. Blair.**Alt. D. Armstrong.**Clerk, Pringle.**Fol. Dic. v. 3. p. 45. Wallace, No 103. p. 272.*

No 176.

1779. February 26. GOLDIE against GIBSON & BALFOUR.

AN arrestment betwixt the hours of four and six, preferred to one betwixt six and nine.

Fol. Dic. v. 3. p. 45.

No 177.

A prior arrester, who entered his claim before a decree of furthcoming was extracted, preferred to a posterior arrester, who brought the process, although the former, after arresting, had not proceeded in his diligence for three years.

1787. July 25. JAMES LISTER against JOHN RAMSAY.

JAMES LISTER, being creditor to Lillias Dewar, used arrestment in the hands of one of her debtors in 1785. He immediately after brought an action of furthcoming, which was conjoined with an action of multiplepounding raised by the arrestee; and he obtained a decret of preference.

Before this decret was extracted, a claim was entered for John Ramsay, in virtue of an arrestment which had been used by him three years before. But the LORD ORDINARY, 'on account of the *mora* on the part of the claimant, of new decerned in the preference.'

In support of this judgment, which was afterwards brought under review of the Court, James Lister