

No 31.
ter, because
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restment.

farms addebted by them to the said Hamilton of Peill, their master, of the crop 1631, forthcoming, for payment of a debt owing by him to the said Warnock; and the tenants suspending that sentence, compeared in the suspension, one Anderson, who by contract had acquired the heritable right of these lands from Peill, before the arrestment execute by Warnock; which contract contained a back-tack set to Peill by Anderson; likeas, before the arrestment upon the said contract, a charter was also subscribed, and albeit sasine thereon was not expedite while after the arrestment, and albeit the sasine was also after the terms of payment, yet he *alleged*, he ought to be preferred to the arrester, in the farms controverted, so far as concerns the back-tack duty, contained in his heritable contract foresaid, seeing the sasine ought to be drawn back to its own cause, viz. to the contract and charter, and the intervening arrestment can be no impediment thereto, no more than an inhibition intervening before the sasine execute by another creditor, would have derogate to the validity of the right and sasine subsequent to the inhibition, the said sasine depending upon a cause anterior to the inhibition, which sasine he could not take the time of the contract and charter, seeing the lands held ward; and before he purchased the superior's confirmation, he could not adventure to take sasine; therefore he *alleged*, that he ought to be preferred to the arrester in the farms, in so far as his back-tack duty did extend unto; for, by the tack foresaid, the tenants were, in effect, become his tenants, and the arrestment could not affect the back-tack duty, which pertained to this party excipient, and not to Peill the arrester's debtor; notwithstanding whereof, the LORDS preferred the arrester to the wadsetter, in respect the sasine, which was the only ground of a complete real right of the land, was after the arrestment, and in prejudice of the said arrestment, it could not give him right to that year's farm, and albeit a creditor's inhibition could not have hindered the party to perfect his heritable right, which had a true and real preceding cause, yet the arrestment was not alike, which behoved to work upon an existent body, which then fell not to be claimed, but by an heritor infert; and therefore Anderson's allegiance was repelled, for the duty of the back-tack acclaimed.

Act. ———.

Alt. *Gibson.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 179. Durie, p. 693.

No 32.

An arrester
of the mails
and duties was
preferred to
another credi-
tor who had
a disposition
of the lands
for security
of his debt,
but without

1642. *June 24.*

Lo. FORRESTER *against* CASTLELAW:

IN a double pointing betwixt the Lord Forrester, and one Castlelaw, where Castlelaw having arrested in the tenant's hands, the farms addebted by them to the Laird of Grange their master, for satisfying of a debt owing to Castlelaw by their master; and the Lord Forrester claiming to be preferred to the said Castlelaw, because before the arrestment, the lands, for most onerous causes, were disponed to him, conform whereto he is in possession, by holding of courts. Castlelaw *answered*, That the disposition ought to have no respect, no real right

by charter and sasine having followed thereupon, and the disposition containing no clause whereby the farms controverted were assigned to him; likeas, notwithstanding thereof, the L. of Grange remained in possession of the lands, and uplifted the farms and duties thereof continually, whereby this year controverted, the farms arrested by him, ought to be paid to him, as pertaining to his debtor, and cannot be claimed by the Lord Forrester, by this disposition, which remained *in nudis finibus obligationis* without sasine, and he having done no legal diligence to recover payment thereby. THE LORDS repelled the Lord Forrester's allegiance, and preferred Castlelaw's allegiance, and admitted the same to his probation, that the debtor retained the real possession of the said lands, and that the Lord Forrester had no real possession of the lands, nor real right, and repelled the allegiance of anteriority; neither did they respect that part concerning his possession, qualified by holding of courts.

No 32.
sasine, without possession (unless by holding of courts,) and without being assigned to mails and duties.

Act. Herriot.

Fol. Dic. v. 1. p. 179. Durie, p. 896.

SECT. VI.

Arresters with Executors-Creditors.

1623. March 9. MUIRHEAD *against* MUIRHEAD'S CREDITORS.

JAMES MUIRHEAD in Hamilton, debtor to umquhile William Muirhead burghess of Edinburgh, in a sum of money, suspends upon double pointing, as being charged by two creditors of the said William Muirhead, viz. on the one part by James Hope, and Mr William his assignee, who for the debt owing to the said James Hope, by the said umquhile William, had convened the nearest of kin of the said umquhile William, who by the law would be his executors, and upon whose renouncing to be executors, he had obtained decret against them *cognitionis causa*, decerning the bonds to be registrated, that execution might pass thereupon *contra bona jacentia*; and thereafter he had obtained himself decerned executor to the said William Muirhead, to the effect he might be paid off his debt in the first place, which was sustained by the Commissaries, and thereupon he intents action against this suspender. And sicklike the suspender was charged by William Dick burghess of Edinburgh, another creditor of the said umquhile William Muirhead, who was anterior in debt and term of payment to the said James Hope; likeas his bond was registrated against the said William Muirhead, in his own time, and before his decease; and the same sum

No 33.
An arrestment used in the lifetime of the debtor, but not followed out, postponed to the posterior right of an executor-creditor.