

No. 23. 1745, Feb. 12. THOMAS GRANT *against* WILLIAM JONES.

JONES arrested betwixt twelve at night of Sunday, the 15th of May, and one in the morning of the 16th, and Thomas Grant arrested at five in the morning, and Jones arrested again at the same hour. President, Arniston, and I, doubted whether arrestment at midnight is legal. I moved another doubt, that the first arrestment depended on a few minutes, viz, Whether before twelve at night or after? They notwithstanding preferred Jones, seven to seven. Only the President had no vote. 26th February 1745, Adhered.

No. 24. 1745, June 9. CREDITORS OF GLENDONING *against* MONTGOMERY.

MACBIEHILL, as factor for the Earl of March, being creditor to Glendonning in a bill, sent it to the Clerk of Peebles to protest and register it, which he did at Peebles, though the bill was not payable there, nor the debtor nor his residence there; and in his protest mentioned a procurator compearing, and witnesses present, though neither was true. This protest was taken and registerate; 6th January horning was raised, and executed 6th May, but nothing further done till the day after he broke in October;—and then he pointed a number of sheep, which sheep he did not dispose of till the Whitsunday following. And the preceding November the other creditors arrested in Macbiehill's hands. And in the forthcoming, the above facts were proved, and the creditors insisted that the pointing being null and illegal, Macbiehill should make forthcoming to them, or value of them. We all agreed, that Macbiehill's *bona fides* ought to defend him against all personal consequences; but several of us thought, that it could not defend against restitution; others thought the sheep coming *bona fide* into his hands, he could not be bound to restore to the common debtor, without payment of his debt, and the same defence should be good against arresting creditors. The Lords found him not bound to restore till he be paid his debt. *Renitentibus* President, Minto, Tinwald, *et Me.* This passed the 9th instant;—and on a reclaiming bill this day, 14th June, we adhered. *Renitente* also Kilkerran.

No. 25. 1745, July 9. BLAIR *against* HENRY BALFOUR of Dunboig.

THE question was, Whether a common debtor's oath is good against an arrester pursuing a forthcoming, to prove a compensation in favour of the defender, in whose hands arrestment was used, notwithstanding the common debtor was insolvent? Munzie, Ordinary, had found it proveable by his oath;—and we Adhered, notwithstanding the decision 23d November 1725, Sir William Nairn.—*Renitente* Kilkerran.

No. 26. 1746, June 29. M'LEOD of Genzies *against* M'LEOD.

CADBOLL being charged upon our decret, sought out debts of the charger's, and purchased one; but being advised that compensation would not be admitted, caused arrestment to be laid in his own hands, and obtained suspension;—and a proof being allowed of the fact, the Lords this day found Cadboll liable in Genzies's whole expenses, which they

taxed to L.60 sterling, and fined in L 30 sterling, payable to Mr Kilpatrick the clerk, for the use of the poor, and decerned.—19th June 1746.

No. 27. 1748, Nov. 9. DAVID GIBSON *against* SIR RICHARD MURRAY.

CAPTAIN CAMPBELL, Curator to Campbell of Kilberry, accepted a bill to Dougal Murray for an account due him by Kilberry. Gibson, as creditor to Murray, arrested in Kilberry's hands; and afterwards Murray assigned it to Sir Richard Murray; and in a competition, Dun preferred Sir Richard Murray. But on a reclaiming bill, we unanimously preferred the arrester, notwithstanding it was said that the account was prescribed *quoad modum probandi*, for still he remained debtor in the money, and in this process owned the debt.

No. 28. 1751, Jan. 11. A. *against* B.

LORD JUSTICE-CLERK reported a question for advice:—An arrestment was used for a debt, and thereafter the debtor was charged, and denounced to the horn for the debt, whereby it began to bear annualrent; and in a competition with other arrestments, the question was, whether the arrestment could be preferred for the annualrents arising from the subsequent horning, or only for the sum for which arrestment was used; and it carried to prefer only for the principal sum.

No. 29. 1752, Dec. 12. FAICHNEY *against* JOHN CAMPBELL.

AUSTIN gave a promissory-note to David Graham, both then in London, in 1744, for L.50, which he indorsed to Pringle, merchant in London, and the indorsation was blank, and Faichney purchased it from Pringle without filling up the indorsation. Austin had conveyed his lands and personal estates in Scotland to certain friends, trustees, to be applied for payment of his debts, and went abroad. Campbell, as creditor to Graham, arrested in the hands of these trustees, and in the forthcoming, called both them and Austin, who on oath acknowledged his being debtor by a promissory-note granted in England, and knew not in whose hands it then was, and thereon Campbell got a decret of forthcoming against Austin. Austin raised multiplepoinding, wherein Faichney, the indorsee, compeared;—and Shewalton preferred Campbell;—and the case being brought before us, I thought Faichney had the only right to the note, and that the decret of forthcoming was inept; that the note behoved to be adjudged by the English statute, and the indorsee was preferable to all arrestments prior or posterior; and for any thing that appeared, this indorsation was before the arrestment; that the arrestment in the trustees hands, who were not debtors to Graham, was inept; and the forthcoming against Austin, without an arrestment, was also null. This was argued in the Court an hour, and they were of various opinions on both points, but at last, on the question, the objection to the arrestment was sustained.

No. 30. 1753, July 28. ELIZABETH BANNERMAN *against* JOHN SALMOND.

BANNERMAN recovered decret of forthcoming against Salmond, which he suspended, for that he had lawfully paid the debt to the original creditor, who had obtained letters