

the sums libelled; and consequently, as the defender has rendered it impracticable to say, what was the value or extent of the goods themselves, he must be liable in their presumed value of L. 150. The defender cannot be in a better case than Grizel herself, were she insisting in a reduction of that decret; and as by taking the goods out of the arrestee's hands, and disposing of them, it has been rendered impracticable to prove the precise value of them, it would be impossible for her to prevail in such reduction; and therefore the defender, who gave her an opportunity of so doing, must be liable in terms of the decree that stands against her.

'THE LORDS adhered to the Lord Ordinary's interlocutor; but remitted to his Lordship to hear parties procurators upon any objections that might be to the decret against Grizel Grant.'

N. B. The cause having come back to the Lord Ordinary, the above objection was again stated by the defender to the decret against Grizel Grant; to which the pursuer having made answer as above, the LORD ORDINARY, upon the 21st February 1761, 'repelled the objections, and allowed the decret formerly pronounced to be extracted.'—And the LORDS, upon advising a reclaiming petition and answers, upon the 8th July 1762, adhered.

*Act. Macqueen & Lockhart.*

*Act. Da. Grene.*

*Clerk, Kirkpatrick.*

*Fol. Dic. v. 3. p. 44. Fac. Col. No 239. p. 435.*

1779. August 11.

VINCENTSON against WILSONS.

THE LORDS found, That arrestments on blank admiral precepts, might be loofed without caution.

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

### Ranking of Arrestments.

1583. January.

WALLACE against SCOT.

THERE were certain sums of money that pertained to Mr John Majorbanks advocate, arrested in the hands of one Mungo Tenant, be two sundry creditors. The first quha had made the first arrestment were the bairns of ane Scot, mariner in Leith; the second arrestment was made by the spouse of umquhile John Wallace writer. The first arrefter intented action against the said Mr John; and the second arrefter has obtained decret against the said Mr John, sua the person in whose hand the silver was having complained to the Lords upon double purfuit, configned the silver into the clerk's hands, unto the time it was found be the

No 149.

No 150.

No 151.

The first arrefter, with the second decree of furthcoming, preferable to the second arrefter with the first decree.

No 151.

Lords who had maist right to uptake the samen, be reason of the arrestments and decreets obtained thereupon.—It was *alleged* for the bairns of Scot, That they had first arrested, and upon the samen obtained decreet, and sua in respect of the priority of the arrestment, they ought to uplift the money, *et qui prior tempore potior de jure*.—It was *alleged* by the wife of umquhile John Wallace, That she ought to uplift the money; because, that notwithstanding of the bairns of Scot had made the first arrestment, yet she had obtained the first decreet, *et sic prior tempore respectu rei indicatae*.—To this was *answered*, That albeit she had obtained the first decreet, yet the second decreet obtained by Scot, *habuit causam a priori*, and fra the first arrestment, and sua ought to be drawn back to the first arrestment.—The matter being reasoned be report among the LORDS, some were of opinion, That the first arrestment with the second decreet ought to have place, *et qui prior tempore prior de jure*. Others were of the opinion, That the second arrestment with the first decreet, *propter auctoritatem rei judicatae*, and priority of the samen ought to have place. Some others were of opinion, That in respect of both decreets and arrestments, the sum should be divided equally amongst the parties, *et sic domini in triplici habuerant opinione*.—THE LORDS for the maist part found be interlocutor, That the first arrestment with the second decreet, should have place *quia habebat causam a priori*. *Vid. l. decreto. l. qui priores in pignore habeantur.*

*Fol. Dic. v. 1. p. 60 Colvill, MS. p. 248.*

1611. December 18. SPEIR against MURE and MURESON.

No 152.

Arrestments near in date, where each party had used due diligence were ranked *pari passu*.

A PARTY being obliged to two severall creditors, whose bonds, registrations, inhibitions, and arrestments, are near one date, and used with all diligence :—THE LORDS, when they contend for making the goods furthcoming, will ordain the sum arrested by them to be divided amongst them *pro rato debiti* proportionally.

*Fol. Dic. v. 1. p. 60. Haddington, MS. No 2339.*

1626. July 27. SCOTT against KEITH.

No 153.

A posterior arrestment, followed by the first decree, preferred.

FULLERTON being charged by Scott and Keith, to make arrested goods furthcoming, suspended upon double poinding. Scott being posterior in arresting obtained sentence, because he having charged William M'Kean, the common debtor, upon 60 days, immediately after, (having instructed all, both that William M'Kean was his debtor, and Fullerton M'Kean's) without continuation got his decreet. Keith behoved to continue his summons (not having how to verify Fullerton to have been M'Kean's debtor, but by his own oath); and so was posterior in sentence.—THE LORDS preferred Scott to Keith.

*Spottiswood, (ARRESTMENT.) p. 16.*