

herself from all danger. This being hotly reasoned, and many thinking that an arrestment did so really affect the goods, that it could be never frustrated by any decret obtained by a third person, the arrester not being called there-to; nevertheless, the exception was admitted, because it was thought, that in a donble pointing the other creditors who had used greatest diligence, would be preferred before the arrester.

No 29.

● Spottiswood, (ARRESTMENT) p. 16.

*** See Durie's report of this case No 52. p. 3865. *voce* EXECUTOR.

1628. July 26.

REULL *against* L. AITON.

IN an action to make arrested goods forthcoming, Reull *contra* L. Aiton and his tenants, who were convened to make the farms addebted by them to their master, forthcoming to him, as arrested in their hands at his instance, for satisfaction of a sum contained in a decret, obtained by him against their said master, and one who was made assignee to the L. Aiton's liferent, by the donatar thereto, and in and to the decret of general declarator obtained by the donatar thereupon, compearing and admitted in this process, for his interest, and which assignee having raised a special declarator against these same defenders, for payment to him of their same farms libelled, in respect whereof, he *alleged*, that he ought to be preferred to the creditor pursuer; and the pursuer proponing sundry arguments of simulation against the said gift, and the assignee *answering*, that they could not be received against him the assignee, albeit they might be received against the donatar's self, if he had not been denuded, seeing any simulation betwixt the donatar and the rebel, whereof the assignee was not partner, could not be now obruded to the said assignee; the LORDS found, seeing the pursuer had arrested the said farms libelled, before the donatar was denuded thereof by this assignation excepted upon, that whatsoever allegiance of simulation could have excluded the donatar's self, after the laying on of the arrestment by the pursuer, if the donatar's self were compearing, and not denuded, the same ought to be received now in the like manner, against the assignee constitute, after the arrestment.

No 30.

Found in conformity with Douglas against Belshes No 29. p. 8347.

Act. ———

Alt. Belshes. Clerk Hay.

Fol. Dic. v. I. p. 554. Durie, p. 394.

1665. November 23. MR JAMES CAMPBELL *against* DR BEATON.

DR BEATON being infest in certain lands, wadset by the Laird of Balgillo, does thereafter, by a minute, take an absolute disposition thereof, for a price expres-

No 31.

After a sale of lands, arrestment was