

obligation registrate, and preceding charge of horning, albeit the denunciation was not execute, nor followed thereupon.

No 19.

Act. Nicolson, jun. et sen.

Alt. Hope et Person.

Clerk, Gibson.

*Durie, p. 48.*

1629. *January 30:* DAVIDSON *against* BALCANQUAL.

A debtor having made his creditor assignee to a debt, owing to him, the term of payment of the which debt owing by the common debtor to the assignee his creditor, was not come by the space of three or four months after the date of the assignation; and this assignation being intimate that same day after the date thereof, that same very day another creditor arrests the same, whose term of payment was past the time of the arrestment; and summons to make the same furthcoming, being pursued by them both, the difference of days of compareance, and citations, was in four or five days, whereof the arrester had the advantage of priority; likeas his arrestment bore the hour of his execution; as also the intimation bore the hour of the making of the same for the assignee, which hour in the arrestment proported a time, which conferred with the hour of the intimation, preceded the same by the space of two hours. THE LORDS preferred the arrester; the reason specially was, because of the priority of the hour, which the LORDS found in this case to be material; for after that moment of arrestment, neither could the common debtor do any thing in prejudice thereof, neither could the intimation, made any space thereafter, affect the debt to the assignee, it being affected of before to the arrester; and the intimation and arrestment bearing these hours, it was found, there needed no other probation to prove the priority.

Act. Stuart.

Alt. ———.

Clerk, Hay.

*Fol. Dic. v. 1. p. 178. Durie, p. 429.*

1630. *January 28:* INGLIS *against* EDWARD.

MR CORNELIUS INGLIS and Nicol Edward, two creditors to John Mackuby, the former having arrested a sum owing to the common debtor by Mr Thomas Ramsay, 13th November, and the other having intimate an assignation made to him by the debtor upon the same day, and they striving for preference; THE LORDS, in respect of both their diligence concurring, would not prefer the one to the other, but divided the sum betwixt them.

*Fol. Dic. v. 1. p. 178. Spottiswood, (CREDITORS.) p. 76.*

No 20:

In a competition betwixt an assignee and an arrester, the Lords preferred the arrester, whose execution bore to be two hours before what the intimation bore.

No 21:

An arrestment and the intimation of an assignation being made in one day, the Lords brought them in *pari passu*, and divided the sum betwixt them.