

o be the common author, as being author to Chirnside by Duns' discharge, and by the contract of division. It was *replied*, That such acknowledgments of authors will not prejudge their singular successors, unless their infestments be produced, which can only show a progress from a common author; otherwise no singular successor could be secure against such acknowledgments or writs not contained in the investiture; and, as to the contract of division with John Wallace, it operates nothing, because the said John Wallace was never infest, but his son James Wallace was infest, as heir immediate to his good-sire.

THE LORDS found the reason of reduction not relevant upon the prior base infestment, without a progress from the King, or a common author, or prescription; and found the acknowledgment did not instruct a common author, without production of the progress of infestments; and that the contract of division was not effectual, unless that Wallace the son were instructed to have been infest, or that he is represented by this party, who thereby is obliged to fulfil his contract of division.

*Fol. Dic. v. 1. p. 184. Stair, v. 2. p. 272.*

1684. February 1.

ANDERSON against CRICHTON.

IN the action for making arrested goods furthcoming, pursued by John Anderson against William Anderson's tenants, and the said William for his interest; it was *alleged* for one Crichton and other arresters, That he ought to be preferred, because his arrestment was prior to John Anderson's. It was *answered* for John Anderson, That he ought to be preferred, because his arrestment was founded upon a debt due by George Anderson, son to the said William, and that the said William was denuded by disposition of the tenement, whereof the mails and duties were now in controversy; and, that Crichton's arrestment was founded upon a debt of William the father, who had no right to the tenement, or mails and duties thereof. It was *answered* for Crichton, That he being anterior creditor to the father, had raised reduction of the son's right to the tenement *ex capite inhibitionis*; and upon the act of Parliament 1621, as being granted by the father to the son, without any onerous cause; and that he held the production satisfied, and repeated his reason, *ex capite inhibitionis*, against the son's right; which being reduced, the arrestment for the son's debt fell in consequence; and that the mails and duties being un-uplifted, and in the tenant's hands, ought to be decerned and made furthcoming to the said Crichton. It was *duplicated*, That although the son's disposition were reduced instantly, yet it could only take effect from the date of the decret; so that the creditor of the son, who had arrested, ought to be preferred to the mails and duties that were due before the decret of reduction. THE LORDS found, That the decret of reduction did only take effect from the present date thereof, and preferred the arrester upon the son's debt, to the mails and duties due before the decret of reduction, albeit they were extant in the tenant's hands un-uplifted.

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No 82.

No 83.

In a competition of arrestments of rents, founded on the debts of different proprietors of the same tenement, the right of one of whom was reduced; found that the reduction took effect, only after decree, so that the arrester upon the debt of the defender in the reduction was preferred.

No 83.

Thereafter it was *alleged*, That the inhibition was null, in respect the execution thereof did bear, that the same was execute at the common debtor's shop, by delivering a copy to his wife there, whereas all executions ought to be personally, or at the dwelling-house. THE LORDS sustained the objection against the inhibition, unless the inhibitor would offer to prove, that the shop was a part of the dwelling house.

Thereafter it was *alleged* for Anderson the arrester, That he had obtained a decret of adjudication of the tenement, whereof the mails and duties were craved ; and therefore ought to be preferred, not only since the decret of adjudication, but since the citation, which was the ground of the adjudication ; in regard the act of Parliament declares a citation upon a summons of adjudication, to be equivalent to a comprising, and infestment following thereupon ; and true it is, that a comprising, and infestment thereupon, would be preferable to Crichton's arrestment. THE LORDS preferred the adjudger, only since the decret of adjudication ; and found, That the act of Parliament, declaring citations of adjudications to be equivalent to a comprising and infestment, was only in a competition with voluntary rights, but did not prejudge legal diligences, such as arrestment.

*President Falconer, No 77. p. 51.*

1763. July 27.

STRACEY TILL and Others, *against* ROBERT, MARGARET, and WILLIAM JAMIESON.

No 84.

An assignation granted by a woman before, but not intimated till after, her marriage, found preferable to the legal assignation by the marriage.

JOHN HAMILTON, merchant in Glasgow, bequeathed to his niece Margaret Jamieson L. 200 Sterling, one moiety payable eighteen months after his own death, and the other at the first term after the death of his wife.

Mr Hamilton having died upon the 1st of April 1759, Margaret Jamieson, by her assignation for love and favour, dated the 7th of June thereafter, conveyed the legacy above mentioned to Robert Jamieson her father ; but, with this proviso, that, in case of his predecease, the whole should return to herself in life-rent, and to William Jamieson, her brother, in fee, in the event of her having no children.

The said Margaret Jamieson was married, upon the 17th of August 1759, to Robert Mason linen-draper in Northallerton, who left her the same day ; and the first account that she got of him afterwards was, that he was a bankrupt, and imprisoned in York Castle.

Upon the 19th September 1759, a commission of bankruptcy issued against the said Robert Mason ; and, upon the 22d of October thereafter, he was declared a bankrupt by the major part of the commissioners, who, of that date,