

1678. July 19.

WARROCK against BROWN.

No 14.  
Execution of  
arrestment  
must be be-  
fore witnes-  
ses.

IN a competition, Brown having arrested, by an officer of the town of Edinburgh, by warrant of a bailie, but whose execution bore no witnesses, which was alleged to be the custom of the place; and within few days after, Warrock having arrested by a solemn arrestment, the execution whereof had witnesses insert:

THE LORDS preferred the posterior arrester, his arrestment being the most solemn and formal, though posterior.

*Stair, v. 1. p. 637.*

1704. January 7.

A. against B.

No 15.  
Letters of ar-  
restment and  
summons of  
furthercoming,  
were sent off  
to be execut-  
ed together.  
Notwith-  
standing the  
incongruity,  
this was per-  
mitted for the  
sake of con-  
venience.

ONE having obtained a decret against his debtor, he thereon raises letters of arrestment, and likewise a summons to make furthercoming, and sends them both to the country to be executed. When the action of furthercoming is called, it is *alleged*, No process; because it is raised before the arrestment was laid on, and so is *filius ante patrem*, and a nimious preposterous diligence; seeing by the order of nature the arrestment should precede, and when it is once executed, then the summons of furthercoming may be raised, and no sooner; and it shocks common sense and reason, to raise a libel narrating an arrestment, which is not yet *in rerum natura*.—*Answered*, There is nothing more ordinary, being much to the ease and accommodation of the lieges, and has no inconvenience following it. Suppose the parties dwell in Orkney, what an expence and loss of time would that be, first to send the letters of arrestment to lay it on, and when that is returned back to Edinburgh, then to raise the summons of furthercoming to be executed; whereas it is a great advantage to the people to send them both at one time, and first to give the copy of arrestment, and then the next day the execution of the process of furthercoming; even as the citations for the first and second diet are given at one time, and a charge to enter heir, and a summons on the passive titles founded on that charge may be given *simul et semel*.—*Rephed*, This is a clear inversion of our styles and forms, and may be prejudicial to the lieges; for, put the case, that one follows the regular course of law in arresting first, and then raising his summons to make furthercoming; another creditor, to prevent him, sends both his letters of arrestment and furthercoming together, and causes execute them at one time; this posterior arrester will certainly get the first decret of furthercoming, and crave preference to the other, though first *in cursu diligentie*; so he who observes form shall thereby lose his cause; and the transgressor, by his precipitation, shall *lucrari*.—THE LORDS considered the practice had grown up to near a custom, and might endanger the quarrelling of many diligences if rejected; and that, in such cases, *error communis* is allowed *jus facere quoad præterita, per leg. 3.*

*D. de offic. prator.* and that it might abridge process, and hold in much unnecessary expence to the people; therefore they sustained the summons of furthcoming, and repelled the No-process: Though some said this might be saved by an act of federunt for the future; and if adjudication or other legal diligences had followed on such decreets, they were not to be totally annulled, but only restricted *quoad* the accumulations of annualrents and penalties. By this same rule it may be argued, where one has taken out a summons under the signet, though yet unexecuted against the defender; yet he may take out letters of arrestment and inhibition, and send them all to be executed together, the summons (which is the ground of the other two) being always first executed, and so the arrestment and inhibition will be reputed as laid on upon the dependence, though it is the citation only that makes a depending process; and when the letters for arresting and inhibiting were taken out and signeted, there was then no citation on the summons, and consequently in construction of law no *lis pendens*; but the convenience of the subjects weighs down this incongruity.

*Fol. Dic. v. 1. p. 54. Fount. v. 2. p. 210.*

No 15.

1735. February 17. MUIRHEAD against CORRIE.

In a process of furthcoming, the judge ordained the arrestee to produce the goods, in order to be roup'd and sold, for payment of the pursuer's debt; this was found an effectual decret of furthcoming, so as to bar another creditor who offer'd to poind before any step was taken upon this ordinance, it being *pleaded*, That this was the regular method in furthcomings of goods, *Stair, p. 375\** and equivalent to a simple decret of furthcoming where money is arrested, and a certain sum decern'd to be made furthcoming.

*Fol. Dic. v. 1. p. 54.*

No 16.  
In a furthcoming of goods, it has the effect of a decree, that the judge has appointed the arrester to produce the goods, in order to be roup'd.

1773. August 6. THOMSON against SIMPSON.

AN arrestment on a bill or other debt bearing interest, unless laid for growing interest, as well as principal, will be limited to principal alone, the sum for which it was laid†.

*Fol. Dic. v. 3. p. 39.*

No 17.

\* p. 388, edition 1759.

† From Tait's MS. See Appendix.