

No 31.

' given, is orderly given and expired.' Which precept doth not warrant arrestment, but imports only that horning, containing arrestment, may, after elapsing of the days of the charge given, be directed thereon. Nor is arrestment execution of a decret of registration, but a new diligence, requiring an express warrant, as letters under the signet, or a special precept by the inferior judge, for directing the officers and messengers in their execution, Stair, Instit. b. 3. tit. 1. § 24. ; Spottiswood, tit. ARRESTMENT, p. 17. as well as inhibitions, adjudications, and other legal executions require special warrants.

Answered for the arrester, *imo*, Horning, being the warrant of arrestment, is a sufficient title to found a furthcoming, without necessity to produce the bond or other ground of the horning, unless the same be specially called for. And in this case, the decret of constitution was not called for ; the principal debtor and the party in whose hand the arrestment was laid on, (who only had the interest to call for it,) being convinced of the verity of the debt. Besides, the objection is instantly taken off by production of the said decret of constitution. *2do*, John Moir was in *bona fide* to arrest upon the foresaid registered bond and warrant, because it is offered to be proved, that it is the constant custom within the Stuartry of Monteith so to do ; and though such a custom were unreasonable, the Lords are not in use to annul bygones, but only to declare what ought to be done in time coming.

THE LORDS found the producing the decret of constitution in the competition, sufficient to support the decret of furthcoming as to the L. 55 ; but sustained the objection against the arrestment for the 250 merks, and found that the same was unwarrantable.

Forbes, p. 330.

1744. November 28. The CREDITORS of BAILIE OGILVY Competing.

No 32.
To support a
decret-arbi-
tral, the de-
fender is not
bound to pro-
duce grounds
and warrants.

JOHN OGILVY, bailie-depute of Cupar in Angus, his lands were adjudged by some of his creditors before the Lords of Session, and by others before the Sheriff of Perth, within which jurisdiction they lay. Afterwards there was a submission entered into by Thomas Ogilvy merchant in Dundee, who had purchased the estate, the several creditors, the heir of the common debtor, and generally all having interest ; and the arbiter ranked the adjudgers *pari passu*.

The adjudgers before the Court of Session raised a reduction and improbation of the warrants of the decreets before the Sheriff, which did not appear, and attempted to set aside the decret-arbital, as proceeding on forged grounds ; the question was, If the presumptive falsehood from a certification, should have that effect ?

THE LORDS, November 2d, ' Found it not competent to quarrel the debts and diligences of the defenders, which had been sustained and ranked by the arbiters, there being no direct evidence of actual forgery offered.' And this day, on a reclaiming bill and answers, in which sufficient evidence of the actual forgery was not offered, ' they adhered.'

No 32.

*Act. Arch. Hamilton.**Alt. Graham, sen.**Clerk, Gibson.**Fol. Dic. v. 3. p. 255. D. Falconer, v. 1. p. 11.*

See No 17. p. 3022.

See APPENDIX.