

1745. *July 9.* BLAIR *against* HENRY BALFOUR of Dunboig.

No. 25.

THE common debtor's oath was found competent against an arrester to prove compensation of the debt arrested, albeit the common debtor was insolvent, and notwithstanding the decision 23d November 1725, Sir William Nairn. *Vide* No. 6.

1746. *June 29.* M'LEOD of GENZIES *against* M'LEOD of Cadboll.

No. 26.
Impetrating an arrestment.

M'LEOD of Genzies having obtained our decret against Cadboll, charged him to pay, and Cadboll solicited some of the charger's creditors to arrest in his hands, and at last purchased one of his debts to found a compensation; but being advised that the compensation would not be sustained, he caused arrest in his own hands in name of his cedent, and thereupon obtained suspension; and at discussing, Cadboll having denied the fact, a proof was allowed, and it having been sufficiently proved, we found Cadboll liable in Genzies' whole expense, which we taxed to L.60 sterling, and fined him in L.20, payable to the clerk for the use of the poor. (See DICT. No. 331, p. 12185.)

1748. *November 9.* DAVID GIBSON *against* Sir RICHARD MURRAY.

No. 27.

A CURATOR having accepted a bill for an account due by his pupil, Campbell of Kilberry, Murray, the creditor, assigned the bill to Sir Richard Murray; but before the assignation, Gibson, as creditor to Murray, arrested in the hands of Kilberry, whose debt it originally was; and in a competition, Lord Dun had preferred Sir Richard the assignee; but on a reclaiming bill, we unanimously preferred Gibson the arrester, because Kilberry remained still debtor, notwithstanding the bill; and though the account was prescribed *quoad modum probandi*, yet Killberry still owed the debt. (See DICT. No. 26, p. 2777.)

1751. *January 11.* A. *against* B.

No. 28.

ARRESTMENT being used, and thereafter the common debtor charged and denounced, whereby the debt for which arrestment was used began to

bear annualrent, which it did not before ; it was found that these annualrents were not secured by the arrestment, and that the arrester could be preferred only for his principal sum. *Referente* Justice Clerk for advice.

No. 28.

1752 *December 12.* FAICHNEY *against* JOHN CAMPBELL.

ARRESTMENT in the hands of the debtor's trustees on his estate, whereon decret of forthcoming followed both against him and them for a debt due by him by a promissory note, granted by him to the common debtor, both then residing in London, was found null, in competition with one having right to the note by a blank indorsation, the date whereof did not appear ; and the indorsee preferred.

No. 29.

1753. *July 28.* ELIZABETH BANNERMAN *against* JOHN SALMOND.

LETTERS of loosing arrestment do not now need to be intimated to the arrester, as was necessary before the act of Parliament 1617, although the style of the letters still continue the same—found unanimously.

No. 30.

See Swinton *against* Swinton, 8th December 1738, *voce* ALIMENT.

See Creditors of Cave *against* Murray, 21st January 1736, *voce* HERITABLE and MOVEABLE.

See M'Gill *against* Creditors of Naughton, 14th February 1737, *voce* COMPETITION.

See Neilson *against* Russel, 13th February 1734, *voce* BILL OF EXCHANGE.

See M'Leod *against* M'Donald, 20th February 1735, *voce* CONSIGNATION.

See NOTES.