

No 151.

Lords who had maist right to uptake the samen, be reason of the arrestments and decreets obtained thereupon.—It was *alleged* for the bairns of Scot, That they had first arrested, and upon the samen obtained decreet, and sua in respect of the priority of the arrestment, they ought to uplift the money, *et qui prior tempore potior de jure*.—It was *alleged* by the wife of umquhile John Wallace, That she ought to uplift the money; because, that notwithstanding of the bairns of Scot had made the first arrestment, yet she had obtained the first decreet, *et sic prior tempore respectu rei indicatae*.—To this was *answered*, That albeit she had obtained the first decreet, yet the second decreet obtained by Scot, *habuit causam a priori*, and fra the first arrestment, and sua ought to be drawn back to the first arrestment.—The matter being reasoned be report among the LORDS, some were of opinion, That the first arrestment with the second decreet ought to have place, *et qui prior tempore prior de jure*. Others were of the opinion, That the second arrestment with the first decreet, *propter auctoritatem rei judicatae*, and priority of the samen ought to have place. Some others were of opinion, That in respect of both decreets and arrestments, the sum should be divided equally amongst the parties, *et sic domini in triplici habuerant opinione*.—THE LORDS for the maist part found be interlocutor, That the first arrestment with the second decreet, should have place *quia habebat causam a priori*. *Vid. l. decreto. l. qui priores in pignore habeantur.*

*Fol. Dic. v. 1. p. 60 Colvill, MS. p. 248.*

No 152.

Arrestments near in date, where each party had used due diligence were ranked *pari passu*.

1611. December 18. SPEIR against MURE and MURESON.

A PARTY being obliged to two severall creditors, whose bonds, registrations, inhibitions, and arrestments, are near one date, and used with all diligence :—THE LORDS, when they contend for making the goods furthcoming, will ordain the sum arrested by them to be divided amongst them *pro rato debiti* proportionally.

*Fol. Dic. v. 1. p. 60. Haddington, MS. No 2339.*

No 153.

A posterior arrestment, followed by the first decree, preferred.

1626. July 27. SCOTT against KEITH.

FULLERTON being charged by Scott and Keith, to make arrested goods furthcoming, suspended upon double poinding. Scott being posterior in arresting obtained sentence, because he having charged William M'Kean, the common debtor, upon 60 days, immediately after, (having instructed all, both that William M'Kean was his debtor, and Fullerton M'Kean's) without continuation got his decreet. Keith behoved to continue his summons (not having how to verify Fullerton to have been M'Kean's debtor, but by his own oath); and so was posterior in sentence.—THE LORDS preferred Scott to Keith.

*Spottiswood, (ARRESTMENT.) p. 16.*