

*Answered*, From the elapse of the term for redemption, Ferguson's claim was only for the balance of the value. No 17.

No objection was made to the arrestments in the hands of Duke and Brown after the sale, but against the arrestments in the hands of Agnew.

*Objected*, That Agnew was not debtor to Ferguson, but to Duke and Brown; and though Ferguson might have been entitled to insist in a declarator against Agnew, that the surplus price belonged to him in preference to his trustees; yet this was not so direct a claim, as to found an arrestment; nor could arrestment be competent in the hands of distinct persons to attach the same subject.

*Answered*, That by the accustomed style of arrestments, all moveable subjects are attached, not only due directly to the principal debtor, but 'to any other person or persons for his use and behoof, by bond, bill, &c.' And there can be no dispute, that Agnew owed the surplus price in this case to Duke and Brown, for the use and behoof of Ferguson.

'THE LORDS found, That the adjudications were the only proper diligence to carry Cairoch's interest in the lands, and the price thereof; reserving the consideration of the competency of the arrestment in the hands of Nathaniel Duke and Patrick Brown, and those in the hands of David Agnew the purchaser.'

For the Arresters, *Montgomery*. Alt. *Lockhart*. Clerk, *Kirkpatrick*.  
*W. J.* *Fol. Dic. v. 3. p. 152.* *Fac. Col. No 125. p. 229.*

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### S E C T. III.

#### Arresters with Assignees.

1618. June 16.

A. against B.

FOUND that an arrestment upon an action depending, with sentence following, should be preferred to an assignation, which was not intimate before the arrestment, albeit intimate an half year before sentence.

No 18.

*Fol. Dic. v. 1. p. 178.* *Kerse, MS. fol. 234.*

1623. February 21. CRAW against IRVINE, and Others.

ONE Craw arrests in the hands of certain persons some sums and corns addebted by them to one Mr James Irvine, who was addebted to Craw in some money; for satisfaction whereof they being pursued to make the same furthcom-

No 19.  
 A prior assignee found obliged to