

1625. *January 14.* LORD KILSYTH *against* ROBERT BALFOUR.

IN an action of double poiding, at the instance of the Lord Kilsyth, who was debtor to David Lennox in 500 merks, conform to his bond, for the which he was charged, at the instance of Robert Balfour, as assignee made thereto by the said David Lennox, and which assignation was intimated upon the 18th day of June 1623; and which charges were suspended by the Lord Kilsyth, upon double poiding, as being distressed therefor, on the one part, by the assignee, and as being distressed, on the second part, by John Abernethy in Glasgow, who had arrested the money in the Lord Kilsyth's hands, to be made forthcoming to him, for satisfying of a debt owing to Abernethy by Lennox, and that his arrestment was execute the same 18th June, 1623, which is the very day of Balfour's intimation of his assignation;—the Lords preferred the assignee to the arrester, because, the arrestment being made the said 18th June 1623, no further diligence was done by the arrester since then, whereas the assignee, upon his bond, assignation, and intimation, had raised charges of horning, and, being drawn in question, and desired to be discussed in this suspension and double poiding, he could no more exact diligence, the other party never having raised any charge or summons since then, to make the money furthcoming to him, upon his arrestment, which naked arrestment the Lords respected not.

*Act. per se.* Gibson, *Clerk.* *Vid.* 26th January 1625, Andrew Cowper; 28th January 1625, Lo. Kilsyth; 14th February 1623, L. Saltcoats.

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1625. *January 15.* LEWIS STUART *against* MAIN and SMITH.

IN an action, betwixt Mr Lewis Stuart *against* Main and Smith,—the Lords found, that corns growing upon any ground, set by the master of the ground to a tenant, where the said corns, after the shearing, are transported off the ground whereon they grew, to another ground; are not hypothecated to the master for that year's farm, by any privilege or prerogative of prelation which might make the master to be preferred to any other creditor of that farmer, in case any other creditor do greater diligence by poiding, or arresting, or otherwise than the master of the ground doeth; but that, in such cases where the corns are off the ground whereon they grew, the master, for his farms, hath no privilege nor preference to another common creditor, except for so much as he may claim by any more timely and lawful diligence done by him than by another creditor, albeit the question be moved for that year's farms and corns of that same crop; for the prerogative granted to the master of the ground is only competent and sustained when the corns of that crop are standing upon the ground of the lands whereon they grew, and for the which the farms are addebted to the master.

*Act.* Craig. *Alt.* Stuart and Cheap. Gibson, *Clerk.*

This decision was immediately stayed, and no interlocutor passed thereupon, and that matter ended by submission; but the contrary is decided betwixt Hay