

ARRESTMENT.

Warrant of Arrestment.

1615. *January 13.* BROOK *against* KELLO.

IN an action for making arrested goods furthcoming, pursued by Thomas Brook Englishman, against David Kello, the LORDS found no process, because there was no decret recovered against Kello.

Kerse, MS. fol. 234.

No 1.

1616. *July 13.* THOMSON and OTHERS *against* PHILP.

IN an action betwixt George Thomson and Ninian M'Morran and the rest of the creditors of Andrew Borthwick and John Philp, the LORDS preferred John Thomson, because his arrestment was used upon a dependence, and the rest raised arrestments were upon their bonds immediately, without respect to any dependence.

Kerse, MS. fol. 235.

No 2.

1623. *March 4.* DICK *against* HEARCH.

AN action being pursued to make arrested goods furthcoming, upon a sentence recovered against a defunct; the executors being convened for their interest, it was *alleged*, no process for making the arrested goods furthcoming, until the decret obtained against the defunct was transferred against the executors, and the convening of them in process was not enough.—This exception was found relevant.

Spottiswood, (ARRESTMENT.) p. 15.

No 3.
The decree against a defunct, upon which arrestment had proceeded, must be transferred against the executors, before decree of furthcoming can be obtained.

1628. *March 5.* BINNIE *against* ROSS.

IN an action to make arrested goods furthcoming, the LORDS were of the mind (but not decided in this process) that an arrestment execute upon a naked bond,

No 4.
The Lords were of opinion, but did

No 4.
not decide,
that arrest-
ment could
not proceed
upon a bond,
before action
on it.

whereupon no sentence was recovered, or any action intended the time of the arrestment, was but a naked intimation of the party's right to him, against whom the arrestment was execute; and nevertheless the same was a sufficient ground, when sentence should be recovered against the principal debtor, for whose debt the arrestment was execute, to produce action against him, in whose hands the goods were arrested, after sentence obtained against the debtor, and that nothing could be done in prejudice of the arrestment; albeit at the using thereof, there was neither dependence nor decret obtained against the principal debtor, but that arrestments in such cases were as effectual for moveables, as inhibitions for immoveables.

A. & L. *Larvie.*

Alt. ———.

Clerk, *Hay.**Durie, p. 354.*1629. *March 26.*WILSON *against* BOYD.

No 5.
An *extract* of
letters of
horning and
arrestment,
with the prin-
cipal execu-
tions of ar-
restment,
found not suf-
ficient to ve-
rify the ar-
restment; the
principal let-
ters of ar-
restment
being lost.

STEVEN BOYD and one Wilson, two of Andrew Kellie's creditors, were striving about L. 400 pertaining to Andrew, which of them should be preferred. They had both arrested, but Steven Boyd having lost his principal letters of arrestment, produced only an extract of letters of horning and arrestment, with the principal executions of the arrestment, subscribed by the messenger.—THE LORDS found, That albeit the extract would suffice for the horning, yet it was not enough to verify the arrestment.

*Spottiswood, (ARRESTMENT.) p. 18.*1710. *January 21.*ALEXANDER FORBES of Ballogie, *against* JAMES CATANACH, Merchant in Aberdeen.

No 6.
A Sheriff can-
not interpose
his authority
to the decree
of magis-
trates of a
town, so as
to found ar-
restment.

IN a competition of the creditors of Alexander Forbes of Craigie, James Catanach having, upon a decret of the magistrates of Aberdeen against Craigie, obtained a summar precept from the Sheriff, for arresting in the hands of Craigie's debtors within the shire, and accordingly arrested:—THE LORDS found the arrestment null; in respect it was unwarrantable in the Sheriff to interpose his authority summarily to the baillie's decret, by giving a precept of arrestment thereon, without citing the party decerned.

Fol. Dic. v. 1. p. 53. Forbes, p. 387.