

No 99. principal sum, or consigned the same ; or else he could not be freed of the annual-rent, being subject thereto by his bond. This cause was ordained thereafter to be further heard, and this interlocutor was stayed.—Here it may be questioned, if sums debtful by heritable bonds be arrestable, which has not been here disputed ; for answer whereto, *see* K. Charles' Parliament, v. 2. p. 250.

*Durie, p. 93.*

1633. February 26. RUTHERFORD and TURNBULL *against* their CREDITORS.

No 100.

Arrestment, used after the debtor's death, is not a habile diligence for affecting his goods ; and gives no preference in competition with creditors who proceed by confirmation, or by pursuing the executors.

ONE Turnbull, relict of Rutherford, being confirmed executrix to her husband, pursuing exoneration against her husband's creditors, by offering of the goods in the testament, to be divided amongst them : The bairns of John Pringle of Cockle-ferrie desiring to be preferred to other creditors compearing, seeing they *alleged*, they had obtained sentence against the relict, for the debt owing to them by the defunct, and that they had arrested in the hands of certain debtors, sums owing by them, to the defunct their debtor, whereby they claimed to be preferred to other creditors, who had done no diligence at all ; notwithstanding whereof, the LORDS refused to give preference to this creditor, and respected not his diligence ; but found that all the rest of his creditors, albeit they had done no diligence, should come in equally with him, in partaking of the goods of the testament, according to the proportion of the debts, seeing the diligence was not respected in this case, where the defunct had died within these nine months, or thereby, last by-past, and where the relict was only confirmed executrix, within these six or seven weeks last by-past ; so that for the shortness of time, there could be no great negligence nor omission imputed to the other creditors.

*Act. Craig & Gibson.*

*Alt. Sandilands.*

*Clerk, Gibson.*

*Fol. Dic. v. 1. p. 58. Durie, p. 678.*

1738. December 22.

EARL of ABERDEEN *against* The other CREDITORS of SCOT of Blair.

No 101.

Arrestment found not to fall by the death of the person in whose hands it is laid.

THE LORDS, after a hearing in presence, found, That an arrestment does not fall by the death of the person in whose hands it was laid, but may be made effectual against his heir by a furthcoming, where the subject is *in medio* ; and therefore the subject in this case being *in medio*, preferred the Earl's arrestment laid in the hands of the defunct, to an arrestment used by his competitors against the heir.

This was new, and till it shall be followed by another judgment, cannot be called a settled point.

*Fol. Dic. v. 1. p. 58. Kilkerran, (ARRESTMENT.) No 1. p. 35.*