

1724. July 8.

Dame EMILIA GRAHAM, Relict of Sir NEIL CAMPBELL of Allangreig, *against*
JOHN CAMPBELL, Taylor in Edinburgh.

No 25.

A posterior
arrestment
preferred to
an assignation
not intimated.

SIR NEIL CAMPBELL being debtor to the defender, assigned him to certain arrears of pay, under back-bond that he should account for the same. The pursuer, as executrix to her husband, pursued Mr Campbell for delivery of a debenture note, which he had got for these arrears.

The defender claimed retention of L. 568 Scots due by Sir Neil to Sir David Forbes, and by him conveyed to Campbell of Rachean, for which debt there had arrestment been used in the hands of the Commissioners of Equivalent, as debtors to Sir Neil in these arrears, against whom Rachean had obtained a decret of furthcoming; and the defender, as creditor to Rachean, had arrested in the hands of the Commissioners what was due to him in virtue of his decret of furthcoming.

It was *answered*, That the arrestment was prescribed, being in October 1718, and no decret of furthcoming ever obtained thereon. *2do*, That Sir Neil had granted to Rachean a corroborative security for this debt, which was assigned to Messrs Boyle and Smollet, who had passed from their cedent's arrestment.

Replied to the *1st*, That, by an act, *quinto Georgii*, intituled, 'An Act for settling certain yearly Funds, payable out of the Revenue of Scotland, to satisfy public Debts in Scotland, and other Uses, as mentioned in the Treaty of Union, and to discharge the Equivalents,' &c. the Commission of Equivalent was finally voided and determined, and the Barons of Exchequer were empowered to clear the Commissioner's accounts and discharge them; and, therefore, after that it was not practicable to pursue any decret of furthcoming against the Commissioners, but the defender, in supplement thereof, before his arrestment could prescribe, raised a declarator before the Court of Session, to have it found, that these sums stood affected with his arrestment.

To the *2d* it was *replied*, That the assignation to Boyle and Smollet was never duly intimate.

It was *duplied*, That the Commissioners might have been convened upon the arrestment used in their hands, notwithstanding that their commission was revoked, as appeared from the 6th act of Queen Anne, intituled, 'An Act for the further directing the Payment of the Equivalent money.'

THE LORDS found, That the arrestment was not prescribed, and preferred the arrester to the assignee, in respect the assignation was not intimate.

Reporter, Lord Pencaitland.

Act. Pat. Campbell.
Clerk, Gibson.

Alt. Arch. Hamilton, sen.

Edgar, p. 74.