

1730. June 12.

ROBERTSON *against* BLAIR.

## No 32.

An assignee, in particular circumstances, found not obliged to assign in prejudice of an arrestment.

MRS DALGLIESH, creditor to the Earl of Roseberry, arrested the rents of his estate in the tenants hands, as also a personal bond of his, in the hands of Alves the debtor; thereafter the same rents were arrested by Blair, another creditor, who, by decret of furthcoming, was preferred *secundo loco* on that subject; last of all, the common debtor granted assignation of Alves, his bond, for onerous causes to Robertson; the debtor in the bond raised a multiplepinding, wherein the arrester was preferred to the assignee. Robertson the assignee, whose subject was thus carried away by Mrs Dalgliesh the arrester, demanded an assignation to the arrester's debts and diligence, in order to operate his relief out of the other subject affected thereby, *sciz.* the rents of the estate in the tenants hands.—Against this demand, Blair, the second arrester of that subject, appeared for his interest; it was *pleaded* for him, That he could not be prejudged by the common debtor's assigning to Robertson.—It was *answered*, That the common debtor remained fiar of the bond, just as much after Blair's arrestment as before, the arrestment not affecting the bond; and therefore, his assignation to Robertson was valid and effectual in law, and did infer an obligation upon the catholic creditor, chusing to draw his payment out of a fund that now no longer belonged to his debtor, to assign for a total relief.—*Replied* for Blair, That the bond being affected by the preferable arrestment, was made litigious; and, therefore, still to be considered as remaining in the person of the common debtor.—THE LORDS found, That Mrs Dalgliesh was not obliged to assign to the assignee Robertson, in prejudice of Blair's arrestment. See APPENDIX.

*Fol. Dic. v. 1. p. 225.*

1730. November 12. JOHNSTON *against* SUITTIE.

## No 33.

Whether, in particular circumstances, a party was bound to assign an inhibition upon payment.

GEORGE GORDON lent 1000 merks upon bond, conjunctly and severally to Kincaid and Suittie. Kincaid got the money, and gave Suittie a bond of relief; upon this bond, after the term of payment, diligence was done by horning and inhibition. Thereafter Kincaid, Suittie, and Johnston, conjunctly and severally, granted bond of corroboration, containing a clause, obliging the other two to relieve Johnston as their cautioner. Johnston after this, and after existence of the inhibition, lent Kincaid, the common debtor, L. 100 Sterling by an heritable bond. Last of all, the said Johnston paid the debt wherein he was cautioner, and took from Gordon, the creditor, assignation to the debt and diligence, and insisted against Suittie for relief. In this process the question occurred, Whether Johnston was bound to assign the inhibition to Suittie, upon payment.—Johnston *pleaded*, That the inhibition striking against his heritable bond, the law did not oblige him to assign against himself.—Suittie *contended*, That this rule holds not betwixt cautioners, who, seeking relief of one another,