

THE LORDS found the ejection illegal ; and ordained Mr William Gordon to be repossessed. No 76.

Fol. Dic. v. 1. p. 263. Dalrymple, No 37. p. 46.

* * * See this case by Fountainhall, *voce* LEGAL DILIGENCE.

1745. February 12.

GRANT against JONES.

THE said parties being both creditors to the corporation of taylors in Canongate, did severally arrest on the 16th day of May, in the hands of tenants, in order to affect the current term ; and the execution of Grant's arrestment bearing to be between five and six of the morning of said day, and the execution of Jones's arrestment bearing to have been at the several dwelling-houses between 12 o'clock and 1 in the morning of said day, it was *objected* to Jones's arrestment, that being at midnight, it was irregular, and ought therefore not to be sustained, otherways all diligence whatever might be executed at such improper hours, which might be of bad consequence, and attended with much inconvenience : That further when the law allows execution at the dwelling-house, in the nature of the thing, it supposes it to be done at a time when the executor may lawfully demand access, which a messenger cannot lawfully do at midnight. And some able judges were of that opinion.

Nevertheless, as it was said, there was no law against executing arrestments at any time of the night, though the question put was only, whether the arresters should be admitted *pari passu* ? Jones was preferred on his arrestment by the narrow majority of seven to six.

Fol. Dic. v. 3. p. 189. Kilkerran, (ARRESTMENT) No 15. p. 43.

* * * D. Falconer reports the same case.

WILLIAM JONES head collector of the stamp-duties in Scotland, being a creditor of the incorporation of taylors in the Canongate, arrested in the hands of their tenants, betwixt the hours of twelve and one in the morning, the 16th day of May, and Thomas Grant merchant in Edinburgh, arrested between five and six that same morning.

A competition arose between them, in which it was *pleaded* for Mr Jones, that the first arrestment ought to be preferred, there being no law to forbid arrestments at any hour ; that it was as probable people would be in bed betwixt five and six, as betwixt twelve and one ; and here it was not pretended the debtor had paid the money for want of being certiorate, but it was still *in medio*.

Pleaded for Mr Grant ; That the middle of the night was an improper hour

No 77.

An arrestment executed betwixt 12 and 1 o'clock in the morning, was preferred to one executed betwixt 5 and 6 of the same morning.

No 77.

for diligence of any kind, when people were not obliged to open their doors; that this haste was catching, which ought not to be encouraged, but the subsequent arrester at least brought in *pari passu*.

THE LORDS, 12th February, preferred Jones. On a reclaiming bill, they refused it, and adhered.

For Jones, *Hay*. For Grant, *Geddes*. Reporter, *Lord Murkle*. Clerk, *Gibson*.
D. Falconer, v. 1. p. 85.

D I V I S I O N I V.

The execution must specify the Names and Designations
of the Parties, Dwelling-houses, &c.

S E C T. I.

Designation of the Parties.

No 78.

1628. *March 19.*J. LAMB *against* PAT. BLACKBURN.

Found an inhibition null executed against the party at his dwelling place, and against the lieges at the market-cross of Edinburgh, pier and shore of Leith, 'conform to the letters within written,' and that because the party was not inhibited by name and surname, at his said dwelling house.

Fol. Dic. v. 1. p. 263. Kerse, MS. fol. 61.

*** This case is reported by Durie, No 4. p. 3683.

1680. *November 26.*The LADY KINGLASSIE *against* ALEXANDER.

No 79.
Executions of
a summons
written on the
back of the

THE deceased Lord Kinglassie having disposed his estate to Mr James Alexander and Rachel Aiton in their contract of marriage, upon condition that the children of the marriage should be of the name of Aiton, the Lady Kinglassie