

taxed to L.60 sterling, and fined in L 30 sterling, payable to Mr Kilpatrick the clerk, for the use of the poor, and decerned.—19th June 1746.

No. 27. 1748, Nov. 9. DAVID GIBSON *against* SIR RICHARD MURRAY.

CAPTAIN CAMPBELL, Curator to Campbell of Kilberry, accepted a bill to Dougal Murray for an account due him by Kilberry. Gibson, as creditor to Murray, arrested in Kilberry's hands; and afterwards Murray assigned it to Sir Richard Murray; and in a competition, Dun preferred Sir Richard Murray. But on a reclaiming bill, we unanimously preferred the arrester, notwithstanding it was said that the account was prescribed *quoad modum probandi*, for still he remained debtor in the money, and in this process owned the debt.

No. 28. 1751, Jan. 11. A. *against* B.

LORD JUSTICE-CLERK reported a question for advice:—An arrestment was used for a debt, and thereafter the debtor was charged, and denounced to the horn for the debt, whereby it began to bear annualrent; and in a competition with other arrestments, the question was, whether the arrestment could be preferred for the annualrents arising from the subsequent horning, or only for the sum for which arrestment was used; and it carried to prefer only for the principal sum.

No. 29. 1752, Dec. 12. FAICHNEY *against* JOHN CAMPBELL.

AUSTIN gave a promissory-note to David Graham, both then in London, in 1744, for L.50, which he indorsed to Pringle, merchant in London, and the indorsation was blank, and Faichney purchased it from Pringle without filling up the indorsation. Austin had conveyed his lands and personal estates in Scotland to certain friends, trustees, to be applied for payment of his debts, and went abroad. Campbell, as creditor to Graham, arrested in the hands of these trustees, and in the forthcoming, called both them and Austin, who on oath acknowledged his being debtor by a promissory-note granted in England, and knew not in whose hands it then was, and thereon Campbell got a decret of forthcoming against Austin. Austin raised multiplepoinding, wherein Faichney, the indorsee, compeared;—and Shewalton preferred Campbell;—and the case being brought before us, I thought Faichney had the only right to the note, and that the decret of forthcoming was inept; that the note behoved to be adjudged by the English statute, and the indorsee was preferable to all arrestments prior or posterior; and for any thing that appeared, this indorsation was before the arrestment; that the arrestment in the trustees hands, who were not debtors to Graham, was inept; and the forthcoming against Austin, without an arrestment, was also null. This was argued in the Court an hour, and they were of various opinions on both points, but at last, on the question, the objection to the arrestment was sustained.

No. 30. 1753, July 28. ELIZABETH BANNERMAN *against* JOHN SALMOND.

BANNERMAN recovered decret of forthcoming against Salmond, which he suspended, for that he had lawfully paid the debt to the original creditor, who had obtained letters