

1753, authorised and appointed the Lord President for the time, Drumore, Elchies, Kilkerran, as a committee of their members, to meet with and have a conference of the Barons on the said petition and answer."

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1752. *December 29.* JOSEPH FAIKNEY *against* JOHN CAMPBELL.

THIS case is reported by *Elchies*, (*Arrestment*, No. 29, and more fully in his *Notes*.) Lord KILKERRAN'S note of it is as follows:—

" This petition reclaims against an interlocutor of Lord Shewalton, preferring an arrester to the indorsee of a promissory-note,—an interlocutor certainly just upon the principles of the law of Scotland. But what the petitioner says is, *1st*, That this promissory-note was not only granted in England, but was indorsed in England; and, therefore, must be governed by the law of England, whereby promissory-notes transmit by indorsation as bills.

" And whereas one of the *rationes decidendi* in the interlocutor is, that the arrestment was before the indorsation; the petitioner says it is a mistake, in fact, for though the indorsation to the petitioner may have been posterior to the arrestment, yet the indorsation to the petitioner's author was of the date of the note.

" But, *2do*, says he, the arrestment is inept, for that the arrestment was not in the hands of the granter of the note, but in the hands of persons to whom he had disposed his effects in trust.

" The fact is, Graham is debtor to John Campbell, cashier to the bank; Austin of Kilsindy is debtor to Graham by this promissory-note, and Campbell arrests, not in the hands of Austin, on a dependence against Graham, but in the hands of Austin's trustees, which, says the petitioner, is no better than an arrestment in the hands of a factor.

" A third thing he says is, that the arrester is preferred, not only for his debt, but also for the expense awarded in the process, on the dependence whereof the arrestment was laid."

ARNISTON.—" Perhaps the interlocutor is not laid upon right principles as to Campbell's preference; but the question is, if, supposing the arrestment validly made, the arrester is not preferable, where he would, by our practice, be preferable to an indorser of a bill on which nothing had followed for so long a time. But the objection against the arrestment appeared to be strong, and the Lords did accordingly pretty unanimously sustain the objection."

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1753. *February 28.* JAMES, EARL of MORTON *against* The OFFICERS of STATE, and JOHN, MARQUIS of TWEEDALE.

THIS case is reported by *Elchies*, (*Teinds*, No. 35.) and in the *Fac. Coll.* (*Mor.* p. 10672.) Lord KILKERRAN'S note of it is as follows:—