

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

loosing the charger's arrestment. Answered, The arrestment was not sufficiently loosed unless the letters had been intimated to her, for such is the style of the letters. Lord Woodhall suspended the letters *simpliciter*;—and on a reclaiming bill, without answers, we adhered, for the style of the letters is no more than a continuation of what was the necessary style of them before the act 1717, but was since quite unnecessary and disused.

ASSIGNATION.

No. 1. 1735, Nov. 7. GRAHAM *against* REID.

KILKERRAN, probationer reporter. The Lords found a decret holding as confessed not null, for that the execution was not produced, the decret being in 1693. *2dly*, A bond being assigned to one, and the heirs of his body, and their heirs and assignees, whom failing to another, the decret obtained at the substitute's instance without service or cognition as heir to the institute void and null. But if the substitution had been to him directly without mentioning the heirs of the institute's body, the Lords thought no service or cognition would be necessary. *3tio*, They found the decret void and null, for that it was obtained at an assignee's instance after the cedent's death upon a general assignation without confirmation.

No. 2. 1737, July 13. LAUDER *against* EARL of ROSEBERRY.

FOUND, that the assignation referring to a list of debts, in which there was one article, "Due by the Earl of Roseberry by bonds, bills, &c. L.600 sterling," without specifying any particular bond or bill, the assignation was not special, but required confirmation; and therefore refused letters either of horning or arrestment.

No. 3. 1737, July 15. AITCHISON'S ASSIGNEES *against* DRUMMOND.

(See Note of No. 10. *voce* ADJUDICATION.)

No. 4. 1741, July 8. LAING *against* NICOL.

THE question whereof we doubted was, how a creditor of a general disponee can make a title to the effects of the defunct falling under the general disposition, since an arrestment is not sufficient, but he must confirm before extract; and for my share, I could not see how such creditor, either of a general disponee, or an executor and universal legatee nominate, can confirm the defunct's testament, the act 1695 having provided a remedy only to the creditors of nearest of kin. This point we remitted to be heard before the Ordinary.

No. 5. 1743, Jan. 11, 22. CROCKAT *against* BROWN.

THE Lords sustained the objection to an intimation of an assignation, that it was made in general for the representatives of the assignee without mentioning who these were, and