

1756. July 10.

GEORGE MILLER, *against* JOHN MELDRUM and Others, Tenants of Balbedie.

No 71.

Tenants who had paid to their landlord, and were decerned to repay to a creditor arrester, having continued to possess for subsequent years; and these subsequent rents being also arrested, the tenants were not found entitled to plead retention against the last arresters, on account of the debt which became due to the tenants by the landlord, in consequence of the double payment which they had made. Here the second arrestment was prior to the second payment of the former rents.

SARAH and Margaret Schaws being creditors of Malcolm of Balbedie, in January 1750 arrested his rents in the hands of his tenants, and obtained decret of furthcoming. The tenants afterwards paid these arrested rents to their master; and in 1754 were obliged to repay them to the arresters.

Miller, another creditor, arrested the rents 1751 and 1752, and insisted in an action of furthcoming.

Pleaded for the tenants, By the payment of the rents arrested to their master, they became creditors to him, as they were obliged to pay the same rents again to the Schaws; therefore they had a right of retention of any subsequent rents affected by arrestments posterior to these payments to their master. That supposing they could not pay to their master arrested rents, yet by paying to him a sum of money, they became creditors to him. Had it been any indifferent sum, they had a right of retention; for a tenant creditor has right to retain against all arresters; it will make no difference that the sum consisted in rents due.

Answered for the arresters, The payment to the master after arrestment was illegal, and cannot found the tenants in a claim of retention: A master cannot discharge future rents in defraud of all posterior arrestments; yet such would be the case here, if the tenants plea were sustained.

Further, the tenants did not become creditors to their master till they were obliged to pay to the Schaws, which was in the 1754, and posterior to the arrestments used by the pursuers.

THE LORDS found, That the tenants cannot have allowance of the payments made to their masters.'

Act. *Scrymgeour.*Alt. *D. Græme.*Clerk, *Pringle.**W. S.**Fol. Dic. v. 3. p. 148. Fac. Col. No 208. p. 305.*

1760. December 10. Competition of APPIN'S CREDITORS.

No 72.

A depositary was not permitted to retain goods, for a debt due to himself, in opposition to an arrestment.

A DEBTOR perceiving his affairs to be in disorder, put the keys of his house in Edinburgh, with an inventory of his furniture and plate, into the hands of a friend, who at the same time was creditor to him in L. 131 Sterling; and to escape from diligence left the country. The depositary put the goods into another man's house, in whose hands one of the creditors immediately laid an arrestment. Another having arrested in the hands of the depositary, he raised a multiplepoinding, *pleading*, That the goods were pledged in his hands, in security of a debt owing to himself, or at least that he had a right of retention, until