PRESIDENT. The Court has never so far extended the maxim of *dies interpellit pro homine.* See case of *Lockhart of Carnwath* and *Walston.*

PITFOUR. I agree that the case of merchants' accounts does not apply: *dies interpellit* is not enough. Where then was the use of denouncing?

HAILES. Thinks interest is due from July 1766; for, at that period, the creditors called upon Malcolm to consign in the hands of a banker: and, if he had consigned, and the money had perished, the loss would have fallen upon the creditors, not upon Malcolm; and, as soon as they intimated their willingness to run the risk, he ought to have consigned. As he did not consign, he ought to pay interest at the bankers' rate of four per cent.

The Lords at first found no interest due, but afterwards, from the special circumstances of the case, found interest due at the rate of four per cent, from the Martinmas after the bargain, adhering thereby to Lord Stonefield's interlocutor.

Act. D. Armstrong. *Alt.* Ilay Campbell.

1767. *June* 26. MRS HELEN STEVENSON *against* COLQUHOUN GRANT.

COMPETITION.

Competition betwixt an arresting Creditor, who had obtained a warrant to sell the goods arrested, and a creditor who afterwards poinded.

[*Faculty Collection, IV. p.* 109; *Supplement, V.* 649. *Kaimes's Select Decisions, p.* 329; *Dictionary* 2762.]

PITFOUR. There are two points; one that an arrestment does not prevent a subsequent poinding, even although a forthcoming should be raised: the other, if the goods are *in manibus curiæ*, that no poinding can proceed. The two decisions in the petition relate to the case of the goods being *in manibus curiæ.* In the present case, I thought that, although there was an interlocutor of the Ordinary for a sale, yet that nothing had been done in consequence of this interlocutor, not so much as any intimation of the order. If a bankrupt debtor has cattle in my inclosures, and if an arrestment is used in my hands, and a forthcoming brought, but no intimation made to the debtor, if he sells, the purchaser is safe. Such were the principles on which I proceeded, but now I incline to be of a different opinion: Upon a reconsideration of the case, I do not think a poinder is in the same situation as a purchaser. A poinder is going on in a course of legal diligence; he may be stopt, though a purchaser cannot. Here there is, in effect, an interlocutor in the forthcoming, though not extracted; arresters of goods, *ipsa corpora*, ought not to be in a worse situation than arresters of a sum of money. The order to sell implies a decreet of forthcoming.

MONBODDO. I think that a purchaser of the goods would not have been safe, because the subject was litigious. But the doctrine of litigious will not apply to the case of other creditors. Although another creditor has inchoate diligence,

I may poind in order to complete my diligence. My difficulty is, that the order granted by the judge is not equivalent to a decreet of forthcoming: if the goods had been sold, no doubt would have remained: but, in this case, they were still the property of the common debtor, and might therefore be affected by the diligence of the creditor.

COALSTON. The legal effects of arrestment two-fold. 1*st*, To preclude the arrestee from disponing. 2*d*, To preclude the common debtor from disponing. But still it is inchoate diligence and no more. Legal proceedings in the forthcoming will not exclude poinding. The only question, Whether is the order of the judge equivalent to a decreet of forthcoming? It is not. Suppose that the debtor had granted a warrant to poind the goods, this would have hindered a poinding to proceed. The warrant of the judge is no more than the warrant of the debtor. My difficulty is as to the decisions quoted. Whether am I to follow my own ideas, or the decisions?

GARDENSTON. For the present judgment of the Ordinary. I cannot make a distinction where there is no real difference. The style of a judgment, when goods are to be sold, must be different from that of a decreet of forthcoming in a sum of money; and the only difference is in style, for the same thing is intended in both cases.

KAIMES. When goods are once *in manibus curiæ*, no poinding can proceed. Why so? because such goods are under the power of the Court. And how can a poinding deprive a Court of that power?

Repel the defence on the poinding, and remit to the Ordinary.

Act. Swinton, *tertius*. *Alt.* A. Lockhart.

Diss. Monboddo.

1767. *July* 16. JOHN TAYLOR and OTHERS, *against* The CONVENERY of the TRADES of ABERDEEN.

COMMUNITY.

A clerk to an incorporation appointed for life, is entitled to object to an assistant being joined with him, though he thereby suffers no diminution of salary.

[*Faculty Collection, IV. p. 293. Dictionary* 13,128.]

COALSTON. If there had been a vacancy, the corporations might have named an assistant and successor; but they could not add an assistant during the life of Taylor, who had a liferent office. I do not think that, in strict law, a successor can be named, while the office is full; but it is not time to try that question, as the nomination of a successor cannot take place till the demise of Taylor.

HAILES. I do not approve of survivancies. The granting them is making a contract with posterity, to which posterity does not consent. We wish to have our own hands free; why should we tie up the hands of those who are to come