

Observed on the Bench: That the three hours space mentioned by Stair is totally arbitrary. In the present case, there is evidence, from the language of the execution, that the one arrestment was prior to the other.—Must hold the execution *pro veritate*, and give legal effect to the diligence.

‘THE LORDS preferred Miss Cameron, in terms of the Lord Ordinary’s first judgment.’

A&S. Rolland.

Alt. M^cQueen.

Clerk, Kirkpatrick.

Fol. Dic. v. 3. p. 45. Wallace, No 11. p. 26.

No 174.

1774. January 28.

ISOBEL WRIGHT *against* JOHN ANDERSON Stationer in London, and LAWRIE, LINDSAY, and THOMSON, Merchants there.

THE parties to this question were, severally, creditors to the deceased Archibald Arbuthnot, merchant in Edinburgh, and had caused arrestments to be used in the hands of sundry persons, his debtors, both in Edinburgh and Leith; particularly, upon the 4th day of October 1771.

The arrestment, at the instance of Isobel Wright, proceeded upon special letters of arrestment, issued by this Court, in consequence of a depending action against Archibald Arbuthnot’s eldest son and representative; and the execution, so far as respects the present question, (after narrating certain arrestments used upon the 3d day of October) is, *verbatim*, as follows: ‘In the hands of each of William Scot and James Craig, baxter in Edinburgh, betwixt the hours of three and four in the afternoon; and in the hands of Alexander Bryce, merchant in Leith, betwixt the hours of five and six in the afternoon; all upon the said 4th day of October.’

The execution of arrestment, at the instance of Messrs Lawrie, Lindsay, and Thomson, which was laid by virtue of an admiral precept, bore, that, upon the 4th day of October 1771, the same messenger arrested, in the hands of each of Samuel Mitchelson, William Anderson, James Craig, and Katharine and Anne Stephen, all in Edinburgh, and Alexander Bryce merchant in Leith, the sum of L. 1000 Sterling, less or more, &c. ‘That he left a copy of arrestment for Alexander Bryce, within his dwelling-house in Leith; and the like copy for James Craig, withing his dwelling-house in Edinburgh, and that betwixt the hours of five and seven in the afternoon;’ and betwixt the hours of seven and eight in the afternoon, he left the like copy for each of the said Samuel Mitchelson, &c. The execution for John Anderson was in the same terms.

To the sum in the hands of Alexander Bryce, who brought a multiple-pounding against the several arresters, Isobel Wright maintained a preference upon the ground of the priority of her diligence; and she cited the late decision, in the case of Cameron against Boswell (No 174. p. 821.), and the rule as laid down

No 175.

Arrestments laid on the same day, at the instance of different parties; one execution bearing, between the hours of five and six, and another bearing, between the hours of five and seven; were preferred *pari passu*, on account of special circumstances; and particularly, that of one messenger having served the whole arrestments.

No 175.

by Lord Bankton, b. 3. tit. 1. § 42. The Lord Ordinary, by his first interlocutor, found, that Isobel Wright was preferable upon her execution of arrestment, which bears the hours of five and six, to John Anderfon, &c. whose executions bear the hours of five and seven. But, upon representation and answers, the Ordinary pronounced a contrary interlocutor in the following terms: 'In respect of the special circumstances of this case; and particularly, that the arrestments founded on by both parties, were executed by the same messenger, some of them at Edinburgh, and others of them at Leith: Finds sufficient ground to presume, that the arrestments in Leith were first executed, and that they were all executed at the same time, viz. betwixt the hours of five and six of the 4th of October; and, therefore, alters the former interlocutor, and prefers the parties *pari passu*, on the sums in the hands of Bryce.'

Upon a reclaiming petition and answers, 'the Court adhered to the Ordinary's judgment;' being of opinion, that here there was no evidence of a priority, and moved chiefly by the circumstance, that, in this case, one messenger had executed all the arrestments, and before the same witnesses; and in whom it had been a gross breach of duty, having the diligence of different creditors in his custody, to have given any one of them a preference to the other.

Act. R. Blair.

Alt. D. Armstrong.

Clerk, Pringle.

Fol. Dic. v. 3. p. 45. Wallace, No 103. p. 272.

No 176.

1779. February 26. GOLDIE against GIBSON & BALFOUR.

AN arrestment betwixt the hours of four and six, preferred to one betwixt six and nine.

Fol. Dic. v. 3. p. 45.

No 177.

A prior arrester, who entered his claim before a decree of furthcoming was extracted, preferred to a posterior arrester, who brought the process, although the former, after arresting, had not proceeded in his diligence for three years.

1787. July 25. JAMES LISTER against JOHN RAMSAY.

JAMES LISTER, being creditor to Lillias Dewar, used arrestment in the hands of one of her debtors in 1785. He immediately after brought an action of furthcoming, which was conjoined with an action of multiplepounding raised by the arrestee; and he obtained a decret of preference.

Before this decret was extracted, a claim was entered for John Ramsay, in virtue of an arrestment which had been used by him three years before. But the LORD ORDINARY, 'on account of the *mora* on the part of the claimant, of new decerned in the preference.'

In support of this judgment, which was afterwards brought under review of the Court, James Lister