

1732. July 20. CRAWFORD *against* SIMPSON.

No 244.

THE quinquennial prescription of arrestments found interrupted by a multiple-poining raised by the arrestee, executed against the arrester, and seen and returned by his procurator; for a multiple-poining is considered as a common process, which any of the creditors may take up and obtain decret upon; whence it must have the same effect in law as if it were at the instance of the arrester himself. See APPENDIX.

Fol. Dic. v. 2. p. 117.

1774. July 28.

MARGARET THOMSON and THOMAS AINSLIE, *against* WILLIAM SIMPSON.

IN a competition between these parties,

Objected on the part of Simpson, That Thomson and Ainslie could draw no benefit from an arrestment which they had used in September 1761, as creditors to one Tait, by an accepted bill, in the sum of L. 173 Scots of principal, and interest due thereon, to which they had acquired right, because cut off by the quinquennial prescription.

Answered; The arrestment in question is at this moment a valid and subsisting diligence; for, that there was a process of multiple-poining raised upon that arrestment immediately after the arrestment was laid on, which was conjoined with an action of spuilzie, brought at the objector Simpson's instance against one M'Lean, who had executed a poining of part of the common debtor's effects, to which Simpson alleged he had a disposition; and, being so conjoined, the proceedings were continued, without sleeping, till the 23d of July 1767, and were again wakened on the 16th January 1771, a year and several months before the five years elapsed; which circumstance, of itself, is sufficient to keep the arrestment from prescribing.

But, *2do*, To put an end to any doubt upon this head, there is a judgment of this Court, upon this precise point, "The quinquennial prescription of arrestments found interrupted by a multiple-poining raised by the arrestee, executed against the arrester, and seen and returned by his procurator; for a multiple-poining is considered as a common process, which any of the creditors may take up and obtain decret upon; whence it must have the same effect in law as if it were at the instance of the arrester himself;" 20th July 1732, Crawford *contra* Simpson, No 244. *supra*. Now, the summons of multiple-poining, in the present case, quadrates in every particular with the essentials required by the decision just mentioned. The summons is raised by the arrestees, executed against Thomson and Ainslie, as arresters; they are called on the margin of the sum-

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A process of multiple-poining, brought in consequence of an arrestment, preserves the arrestment from prescribing, although the arrester's interest is not produced in the multiple-poining.

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Objected. 2do, That although the multiple-poining, proceeding upon Thomson and Ainslie's arrestment, was conjoined with the action of spuilzie against M'Lean, still their interest was not produced in that multiple-poining, nor sooner than the 25th of November 1771, after the process of multiple-poining was wakened.

Answered; The act 1669 does not say that arresters shall produce their interests in the multiple-poining brought, to preserve their arrestments from prescribing; and the above-mentioned decision clearly shows, that there is not the least necessity for producing the arrestments in the multiple-poining for that effect. As a process of multiple-poining was brought, the particulars required by the act of Parliament and the above-mentioned decision being followed forth, this preserves their arrestment from prescribing.

The COURT considered, that here there was one decision directly in point, and none adverse; and, accordingly, gave judgment as follows:

"Find the quinquennial prescription in this case sufficiently interrupted; therefore sustain the arrestment 1761, and find, that, in consequence thereof, Thomson and Ainslie fall to be preferred not only to the principal sum of L. 173 Scots, but also to the annualrents due, or that might become due thereon."

Reporter, *Auchinlock.* Act. L. *Advocate.* Alt. J. *Boswell.* Clerk, *Tait.*

N. B. Thomson and Ainslie, before resorting to their original arrestment 1761, had pleaded, as a ground of preference, the priority of an arrestment at their instance, as creditors to Tait, laid on in 1771, whereby they arrested a precise determinate sum, as the supposed amount of the debt due by the arrestees severally to Tait, or of the effects belonging to Tait in their hands; and the question thereupon arising was, whether that arrestment in 1771 could be effectual beyond the precise sum arrested, or whether, *e contra*, it would be extended to the full sum in which they were creditors to Tait, in so far as the same exceeded the sum arrested? The Lord Ordinary sustained the arrestment to the full extent of the debt due by Tait to them, both principal and annualrents, though exceeding the sum arrested, which was adhered to by the Court, upon a petition and answers; against which Simpson having reclaimed, the Court, upon the 6th of August 1773, gave judgment as follows: "Find, that the preference decreed to Thomson and Ainslie can go no further than the sum of L. 173 Scots, the sum for which the arrestment 1771 was used." But Thomson and Ainslie having reclaimed, praying to find, that, in virtue of the arrestment 1761, or of the arrestment now laid on, (1771) they were entitled to recover payment not only of the principal sum of L. 173 Scots, but of the

annualrents thereof, the Court finally gave judgment *ut supra*, sustaining the prior arrestment, as effectual both for the sum arrested, and likewise the interest accruing thereon.

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Fol. Dic. v. 4. p. 104. Fac. Col. No 128. p. 342.

1802. July 9.

MACMATH *against* CAMPBELL.

By the decree of division (21st July 1780) among Neil Mackellar of Daill's creditors, Duncan and Peter Fisher were found entitled to draw a certain sum for a debt due to them. Donald Macmath, a creditor of Duncan Fisher, used arrestments on the 3d and 5th of September 1793, in the hands of Neil Macgibbon, the purchaser of Mackellar's estate, which, with the grounds of debt, were produced on 5th December 1798, in the multiplepointing which had been brought by Macgibbon in January 1798. Duncan Campbell of Ross also produced an assignation by Duncan Fisher to his share of the above debt, which was dated on the 3d, and intimated to Macgibbon on the 6th February 1795.

Macmath demanded a preference on the fund *in medio*, in virtue of his arrestments being of a date long prior to Campbell's assignation, who, on his part objected, that the preference of the arrestments was cut off by the quinquennial prescription.

The LORD ORDINARY found, (11th March 1801,) "That the price of the lands of Daill, in the hands of Mr Macgibbon, the raiser of the multiplepointing, falls to be considered as a personal subject, and as such affectable by the diligence of arrestment; but in respect it does not appear to the LORD ORDINARY, that an arrester being called in a multiplepointing, raised by the common debtor, can have the effect of interrupting the quinquennial prescription, unless the arresting creditor shall have shown an intention to insist on his arrestment by producing it in the multiplepointing, or at least shown an intention to do so, by taking the summons to see, or otherwise entering an appearance, and that in this case, Donald Macmath is not alleged to have either produced his arrestment, or entered appearance by taking the summons of multiplepointing to see, or otherwise, within the five years; finds, That his arrestment is cut off by the quinquennial prescription; that it can be no ground of competing with Mr Duncan Campbell, as claiming right to Duncan Fisher's share of the sum for which he and his brother Peter stand ranked on the price in Mr Macgibbon's hands, upon an assignation from him duly intimated to Macgibbon: Finds, That the said Duncan Campbell has, under that assignation, the preferable right thereto, and decerns in the preference accordingly."

On reclaiming, the arrester

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Whether a multiplepointing raised by an arrester, interrupts the quinquennial prescription of arrestments, tho' production of the grounds of debt is not made in the action within five years from the date of the arrestment?