rester, it followed of course, that, after a decreet for selling such goods was pronounced, the property of the former owner, as to the *ipsa corpora*, was at an end, nothing remaining in him but a claim against the person authorised to sell the goods, to pay him any balance that remained after satisfying the arrester; and therefore a poinding of these goods was totally inept, the property of them not being in the common debtor: and, in support of the above doctrine, Lord Stair, p. 392, § 38, and p. 394, § 42, was appealed to, as also the decisions, *November 8th* 1680, *Stevenson* contra *Paul*; *February 19th* 1717, *Stark* contra *Ramsay*; and *February 13th* 1735, *Muirhead* contra *Corry*; in the last of which cases it was said that the precise point in issue had been determined.

ANSWERED for the defender.—It is a principle firmly established in law, that, in competitions, it is the first complete diligence that gives the preferable right; and more particularly, that, as arrestment is but an inchoate diligence, it does not stop a poinding of the goods arrested; and so it is particularly laid down by Stair, *lib.* 3, *tit.* 1, § 37 and 42, and Bankton, Vol. II. fol. 264, § 64. And, if that principle was just, it was impossible that the warrant to sell the goods arrested could possibly be deemed equivalent to a decreet of forthcoming, as that order was but a preparatory step towards obtaining such decreet. Therefore it was a mistake to say that the property of the *ipsa corpora* of the moveables was transferred from the common debtor to the arrestee, by obtaining the warrant authorising the sale of the furniture: it might as well be said, that the execution of the summons of forthcoming had that effect, which it was impossible to maintain; and, even supposing the goods had actually been sold, without any poinding having intervened, it was pleaded, that it would have been necessary for the petitioner to have obtained a decreet of forthcoming, to transfer the price to her in right of her arrestment, as come in place of the goods themselves; which plainly showed that the diligence was not completed, and therefore that the defender's poinding ought to be preferred. And as to the decision in the cases of *Stark* against *Ramsay*, and *Muirhead* contra *Corry*, it was answered, that they were not similar to the present question. In the first case, the goods were carried off *in manibus curiæ*, and in the very instant they were appreciating; and, in the second case, the competition ensued betwixt two diligences that were both incomplete, no actual poinding having ever been executed.

"The Lords altered the Lord Ordinary's interlocutor, repelled the defence founded on the execution of poinding, and remitted to the Ordinary to proceed accordingly." *Fac. Col. Vol. 4, No. 63, p. 109.*

1785. *January 25.* JAMES and WILLIAM STEWART and HIS MAJESTY'S ADVOCATE *against* GEORGE STORY.

GEORGE Story was brought to trial by the son and father of the deceased William Stewart, surgeon in Paisley, and by the King's Advocate for the public interest.

In the major proposition of the indictment, it was set forth, that murder, especially the murdering of a person in his own shop, was a crime of a heinous nature, and severly punishable.

The minor proposition proceeded to allege, that the pannel, having conceived a previous ill-will at the deceased, did wickedly and feloniously attack him in his own shop, breaking several bottles full of some liquid substance over his head, till the blood gushed from him: That, having afterwards thrown him on the ground, and while he was unable to defend himself, the pannel had beat him with his hands, and trampled him under his feet, till he was at length rescued by some people coming into the shop; and that, notwithstanding every care having been taken of the deceased, he had languished five days, and then died of the hurts he had received from the pannel.

The defences urged for the pannel were, That he had always lived on the best terms of friendship with the deceased, to whom he was nearly allied by marriage: that the deceased having, at different times, thrown a quantity of assa fœtida on the pannel's clothes, the pannel had threatened to break all the bottles in his shop; and soon after, being much intoxicated, he had gone into the shop of the deceased, and had thrown several bottles at him and his apprentices, but without any intention to hurt, far less to deprive him of his life.

Some exceptions likewise were taken to the relevancy of the indictment, which however the Court sustained as relevant to infer the pains of law; but at the same time allowed the pannel a proof of all circumstances tending to exculpate him or to alleviate his guilt. And the jury returned a verdict, "That the pannel, George Story, was not guilty of the murder libelled, but that he was guilty of culpable homicide."

This verdict was approved of by the Court, who pronounced the following sentence:—

"In respect of this verdict, the Lords find the pannel liable in an assythment to John Stewart, private prosecutor, for himself, and in behalf of the other nearest of kin of the deceased William Stewart; and having considered the circumstances of the pannel, they modified the same to the sum of 1000 merks: Farther, they adjudge the pannel to be committed prisoner to the tolbooth of Paisley for the space of eight months, and thereafter till payment of the said assythment, and also until he find security, in the books of adjournal, to keep the peace for the space of two years, under the penalty of 2000 merks Scots." *Fac. Col. Vol.* 9, *App. No.* 6, *p.* 9.

1787. *February* 20. WILLIAM MACDOWALL *against* ANDREW BUCHANAN.

MR Andrew Buchanan was, at the meeting for election in 1786, enrolled as a freeholder in the county of Renfrew.

His freehold, which was obtained from Mr Spiers, stood precisely on the same footing with that of Mr George Buchanan, with this only difference, that he had not subscribed the deed of consent executed by the heirs of entail. But