

1796. *June 29.* MRS. JEAN DOUGLAS *against* JOHN MASON.

Janet Buchanan conveyed her estate of Craigievern in trust, for payment of her debts and legacies, particularly of £.100 left by her to Walter Monteith, which, upon her death, he assigned to his mother, Mrs. Jean Douglas. The assignation was intimated to the trustee on the 3d March 1792, between two and three in the afternoon, as appeared from a jotting on the assignation signed by him, but not holograph.

John Mason, a creditor of Walter Monteath, used an arrestment in the hands of the trustee, as the execution bore, between one and two of the afternoon of the same day.

At this time the trust-estate had not been sold. After the sale, the trustee brought a multiplepinding against Mrs. Douglas and John Mason; in which Mrs. Douglas objected to Mason's interest, That as the trust-estate was heritable in March, 1792, Walter Monteath's interest in it could not be attached by arrestment; 29th July, 1634, Laird of Lugton against Creditors of Dishington, No. 35. p. 699.

Answered: Walter Monteath had a *jus crediti* against the trustee, for attaching which, arrestment was the proper diligence; 25th February, 1780, Grierson against Ramsay, No. 84. p. 759.

The Lord Ordinary preferred John Mason.

Upon advising a reclaiming petition, with answers, the Court considered the competency of the arrestment to be settled by the case of Grierson. And it was further observed, That, in order to give an arrestment a preference to an assignation, Lord Stair is of opinion, that the execution of the one must precede the intimation of the other at least three hours; and that at least there must be such an interval of time between them as to preclude the possibility of mistake as to their priority; of which, particularly as the two acts were not performed by the same person, there was not in this case sufficient evidence.

The Lords "found, That the parties fell to be preferred *pari passu*."

Lord Ordinary, *Swinton*.
Alt. *Cha. Brown*.

For Mrs. Douglas, *Arch. Campbell, junior*.
Clerk, *Home*.

D. D.

Fac. Coll. No. 226. p. 526.

1797. *March 2.* FRANCIS DUGGAN *against* ALEXANDER WIGHT.

A trust with regard to heritage can be proved only by oath or writing, although created by the deed of a third party.

Parole evidence of trust refused, although it was alleged to be in part established by circumstances of real evidence.

Fac. Coll.

* * This case is No. 664. p. 12761. *voce* PROOF.

No. 52.

When an heritable subject is vested in trustees for payment of legacies, the interest of the legatees may be attached by arrestment.

No. 53.