

that these bonds were granted *Spe Summe rance pecunia*, and that the money was never advanced by him. Which oath must be held as proof against the arrester, seeing if he acknowledges that he gave the money for the bond, he is virtually swearing to his own hurt, it being his interest that the arrester prevail in the fourth comming. It was answered for the pursuers, 1^o an oath of party being binding in consequence of a legal contract, can have effect only between the parties thereto, and hath no influence upon the Debetor, or rights of third parties as an arrester is. 2^o The arrester's obligation being legal his oath cannot militate against his creditor: for he being bound against the arrester's recourse by *In solvendo* a Decree of Justice, he may be preferred to him whether the arrester or debtor in the fourth comming prevail; and perhaps he might contend with the arrester in the fourth comming, for some share of the gain to disappoint the effect of the arrester's diligence. Besides the Debetor's interest the bond to continue in the hands of the arrester's Debtor, which he would not have done had he not got the money. The Lords found, that the Exception of not having paid Money may be proved by the Debtor both after arrestment. But in regard the Debtor allowed the bond to be so long in the hands of the arrester's Debtor, that said Debtor is bankrupt, found it could not be proved by his oath 23 Novemb. 1725 *Baron of Dunsmuir contra Captain Drummond*. A Debt where of the term of payment is not come being arrested, and a fourth comming thereof pursued before the term, the bond occurred in the fourth comming superseding Execution at the creditor's instance till after the term 21 Feb. 1624 *Brown contra Johnston*. In a Competition of arresters among themselves, or with assignees pretending right to the subject arrested, they are, *paribus*, preferred according to the dates of the arrestment, and Intimations of the assignations, tho' all in one day, if one be three hours prior to another, which is a time that shall be fixed upon to ascertain that the messenger or Mollary contain not be misled in his Reckoning of priority, *Statute 3 Jul. 1744 lib. 4 Tit. 35 § 37*. By the chancery Laws, one arrester is preferred to another who is but one hour after him *Statute*

Juris

Juris Præd. *Dorens Part 1 Const. 28 Feb. 1747*. And even with an arrester was once preferred to an assignee, whose assignation was Intimated but the hour after the arrestment 30 January 1629 *Davidson contra Balcangual*. The three hours before the Standard of preference. If all competing arresters and assignees be upon one day and some Express the hour, and others do not, the arrestment or Intimation within the hour is preferred to have been done the last hour of such day 4 July 1706 *contra Brownley*. But if none express the hour, the bond may be brought in pari passu, *Statute 14 Jul. 1703 lib. 1 § 43*. Tho' the arrestment be done in one day without mentioning the particular hour, were brought in pari passu, tho' one of the arresters offered to prove that his fixing of arrestment was given some hours before the other's, but the law is not to be apt to mislead or to get the hour 28 June 1705 *Julien contra Ross*. Tho' where the Intimation of an assignation and the execution of arrestment upon one day produced in competition mention not the hour, the assignee and arrester were brought in pari passu, altho' a new Execution bearing the hour was produced 21 July 1717 *Serimour contra Edie*. But to Sir James Stuart (answer to Dilig. *Donald's* Arrestment) it seems hard, that arrestments ^{made} by him to creditors for affecting their Debtor's moveables, should be considered so Nicely, as to be preferred by hours or even by days, where by many Innocent creditors to whom he has done violence, and injured, are often so distressed and disappointed: When in appraisings or adjudications allowed to creditors for affecting their Debtors lands, law indulges year and day that creditors Remoter who have not such a great share have creditors Condition may not be unduly excluded; and in the case of a Debtor deceasing, his personal creditors are allowed half a year after his decease for coming in *pari passu*. How ever such a thing requires an express law. Arrestment of a Debt before the term of payment, is preferred to a posterior arrestment thereof after the term 26 January 1714 *King contra Donald Jones* 2 January 1728 *Wal King contra Wilkie*. Seeing otherwise it were in the power of bankrupts to prefer one creditor to another, by Discovering to their favourites the terms of payment of Debts due to them, the