

the prejudice of others who cannot be supposed to know such private terms, *Ex p. 147. The Jura Subveniant Vigilantibus* & *Dormientibus* l. 24. *Ignorantia in factis*. Cred. Arrestment of a Conditional Debt before the Condition exists, is preferred to a posterior Arrestment thereof after the Condition is come to pass.

*Sir John Hishel* (Doublet &c. *Et* Arrestment of Conditional Debts) will have an Arrestment of a sum due upon a Wadset preferable to an Arrestment thereof after an order of Redemption used by the arrester's Common Debtor; as in the case of a prior Arrestment of a Conditional Debt. But this is *ad invidiam Juris* & *jurisdictionis* & *ad* *Sir James Stewart* (answers *ibid.*) opposes, a sum due upon a Wadset where upon Imprisonment hath followed is not Arrestable, nor can he have a Conditional Debt in case of Redemption, & that so soon as the order is used for Redemption, it may be arrested, and the first Arrestment preferred. Who when the Competition is between an Assignee and an arrester, the latter will be preferred if, anterior to the Intimation of the other's assignation, and the arrester was not in Delay of obtaining a Wadset, & if he were such arrester is in purely negligent in completing the Intimate Diligence, *Jura Subveniant Vigilantibus* &c. The priority is lost if Complicated by Intimation, will be preferred. *Stair lib. 4. Tit. 35. § 6.* *Ray*, one having assignation from his bankrupt Debtor was preferred to a posterior arrester. In respect the assignee had used Diligence by holding before the arrester had charged with holding; and the Act of Parliament l. 21. binds only the Common Debtor to prefer one Creditor by voluntary Gratification to another who hath done prior Diligence. *20 Novemb. 1677. A. Bishop of Glasgow contra Nicols and Burn.* But then it is in a *lib. 3. Tit. 34. § 44.* And tho' in a Competition of Arresters of the same kind equal in Diligence, the first will be preferred in the forth coming according to the Rule *prior tempore potior Jure*: Yet an arrester having raised a Summons of forth coming, and having after another Creditor had arrested, got assignation to the Subject from the Common Debtor; the first Arrester was preferred, altho' he did no further Diligence, but only compared with his Arrestment, and Summons, &c.

The posterior arrester had brought his Cause the length of being concluded and ready for advising; in respect the assignation was filled the want of further Diligence and Decree might then pass on the first arrester's Summons, and the parties with the knowledge of the sum arrested. *5 B. 17. July 1673. Birnie contra Monal and Crawford.* Where two Arresters whose grounds of Debt are of the same kind are not equal in Diligence, the outlainer of the first Decree of forth coming, as having the first complete Diligence, is preferred; if both Decrees are for the coming, then obtained in the same Court, or in Different Courts where there is no difference of process is the same and a like Proceeding. *Stair lib. 4. Tit. 35. § 6.* In a Competition of two Arresters, where of the first brings to pursue a forth coming before the session and the second before an inferior Court, if the first arrester did exact Diligence to procure Decree, but was delayed or kept back by the Court of the Lord and the second of process offered in the session, the latter Arrester got the start of him by obtaining Decree in the Superior Court where the form of process is shorter and faster, some reason can suffice: the first arrester is preferable to the outlainer of the first Decree. *21 Novemb. 1677. Montgomerie contra Kirkcaldy.* Two Arresters equally Diligent having obtained Decrees, one on the first was preferred. *1 Feb. 1686. Coltoner Cunningham contra Kirkcaldy.* An arrester after the term of payment of the Debt arrested, having obtained Decree for making forth coming, was preferred to a prior arrester whose Arrestment and Decree of forth coming were both before the term of payment of the sum arrested; tho' the Decree Decerned only to pass after the term. *23 January 1673. Mader contra Smith.* Because the Arrestment of a sum before the term of payment thereof is sustained, tho' irregular and *hinc* or *prematuro Diligentia* too precipitate Diligence to procure a forth coming also before the term of payment. But where several persons arrest upon Claims of Different kinds, he who arrests upon a Decree is preferred to a prior arrester upon a Depending Action, whose Debt is not constituted by a Decree against the Common Debtor at the time of the Competition. *Stair lib. 3. Tit. 1. § 46. McKenzie Inst. lib. 3. Tit. 65.* An arrester upon a Decree or Registered Bond is preferred to an arrester upon an Unregistered Bond tho' it bear a Counsel to Registration. *Stair lib. 4. Tit. 35. § 6.* Who is no more privileged than