

The question came before the Court by an advocacion by Mr Hog, of a judgment of the Stewart of Kirkcudbright, who had found that the 'error in the date of the execution in question may be amended by the messenger and witnesses.'

No 27.

THE LORD ORDINARY having taken the cause to report, the COURT, by a great majority, found, 'That the error in the date of the execution in question cannot be rectified so as to entitle David Maclellan and William Lowden to be conjoined in the poinding with Walter Hog; but found, that the present action having been brought within four months of the date of the poinding, they are entitled to a proportional part of the goods poinded, or value thereof, after deduction of 10 *per cent.* and the expence of the poinding.'

Lord Ordinary, *Armadale.* For Hog, *D. Catcart.* Alt. *G. J. Bell.* Clerk, *Sinclair.*  
*R. D.* *Fac. Col. No 32. p. 74.*

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 DIVISION II.

## Litigious by Arrestment.

1620. June 24. AIIKEN against ANDERSON.

No 28.

THE LORDS found that an arrestment made upon goods, could not hinder the lieges to buy in public market.

*Fol. Dic. v. 1. p. 554. Kerse, MS p. 235.*

1623. December 10. DOUGLASS and Others against BELSHES.

No 29.

In an action betwixt Douglas and others against Belshes, wherein diverse creditors contending with the assignee, made by the donatar, to the escheat of him who was their common debtor, the creditors were preferred to the donatar's assignee, albeit the donatar's assignee was also a creditor; because the creditors proponed an alleigeance of simulation, offering to prove that the gift of escheat and declarator were taken upon the rebels own moyen and expenses, &c. and so the assignation being of an escheat null for the cause of the simulation, cannot prejudice the creditors, who before the assignation had affected the goods controverted, with arrestments at their instances, at which time of the arrestments making, there was no assignation; and so the cause ought to be respected, as it was at the time of the arrestment, which being then disputed betwixt them and the donatar, the simulation would have been found relevant, and albeit sinsyne, the assignee being a creditor, had received as

A subsequent assignation by a donatar of escheat, found not to prejudice prior arrestments by creditors of the common debtor.