No 7.

goods were standing; and no hinderance or stop was put to the poinding other than this, that Gordon refused to open these presses.

*Answered* for Muirhead; The objections to the formality of his diligence can have no influence; for, 1*mo*, With regard to the vitiation, that is removed, by producing an original execution, wrote out fair the same day with the other, which the messenger abides by. 2*do*, There is nothing in the observation, that the horning wants the word *apprise*; as it bears to *poind* and *distrain*; nay, the word to *poind*, was sufficient warrant for doing every thing that made part of the poinding; and, where that is, the word *apprise* is superfluous; therefore, as his diligence is unexceptionable, his attempt to poind must be held as completed. Nor is it of any importance, that an endeavour to poind does not transmit the property; as that is suppliable by a decree of the Court, giving a preference in respect of the diligence inchoate and unlawfully interrupted. Neither had the messenger any occasion for letters of open doors, as he got voluntarily within the house, nay, within the very room where the goods were lodged; and, although the law knows what letters of open doors are, yet letters to open chests and presses is a novelty. Besides, he is not bound to tell whether he had such letters or not; as the messenger was stopt, not for want of them, but on account of Provost Corrie's prior arrestment.

THE LORDS preferred Robert Muirhead.

*Fol. Dic. v.* 1. *p.* 178. *C. Home, No* 14. *p.* 35.

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1767. *July* 27. HELEN STEVENSON *against* COLQUHOUN GRANT.

No 8.
An arrester having obtained from a Judge a warrant to sell; found the goods could not, in that state, be poinded, being held to be *in manibus curiæ*.

IN a furthcoming upon an arrestment, the arrestee having deponed upon certain goods in his hands belonging to the common debtor, the Lord Ordinary granted warrant to the inferior judge to sell the goods for behoof of the arrester; but, before the order was put in execution, the goods were poinded and carried off by another creditor. This fact produced an action for the value of the goods, at the instance of the arrester against the poinder. The Lord Ordinary having sustained the defence of lawfully poinding, the interlocutor was altered by the Court, who sustained the action, and repelled the defence, upon the following ground;—supposing goods to be *in manibus curiæ*, the Court cannot be deprived of its possession at short hand by a poinding. The goods were here under the power and direction of the Court, without which the Court could not issue a warrant for sale.

This argument appears to me inconclusive. In the *first* place, I see not clearly why even a proper sequestration in the hands of the Court of Session should exclude a poinding which proceeds upon the King's authority. *Secondly*, If a warrant to sell in a process of furthcoming be equivalent to a sequestration, so must a warrant for arrestment; for both warrants proceed equally upon the supposition that the goods are under the power and direction of the Court.

No 8.

And yet it was never thought that an arrestment could obstruct a poinding. The judgment, however, is right upon a principle of equity, that undoubtedly moved the Judges, though it was not brought into the reasoning, namely, That an inchoated attachment by one creditor ought to bar all others; which is laid down and inforced in the principles of equity.

*Fol. Dic. v.* 3. *p.* 151. *Sel. Dec. No* 257. *p.* 329.

## SECT. II.

### Arresters with Appriseres and Adjudgers.

1623. *February* 14. L. SALTCOATS *against* BROWN.

No 9.
An arrester of bygone annualrents was preferred to a prior appriser of an infeftment of annualrent, the appriser having been *in mora*.

THE L. Saltcoats having arrested the mails and duties of a tenement of land pertaining to his debtor, and pursuing to make the same furthcoming, compeared one Brown, and *alleged* that he ought to have the said mails and duties, because he had comprised that tenement long before the arrestment, whereby he became in the heritable right in the land, and consequently ought to be preferred to be answered of the duties thereof.——THE LORDS prefer the arrester, by virtue of the sentence, notwithstanding that the comprising was also a sentence, and that it preceded the arrestment; because there intervened a great space betwixt the comprising, and before the arrestment, during the which whole space neither had the compriser obtained sasine, nor yet since was he seased; neither had he done diligence to recover sasine, nor used any other diligence all that intervening time, upon the comprising, without the which he could not be found to have a real right; and so repelled his allegeance founded upon his comprising.

Clerk, *Hay*.

*Fol. Dic. v.* 1. *p.* 179. *Durie, p.* 46.

1627. *December* 13. TENANTS of DRYUP *against* SHERIFF of FOREST.

No 10.
An appriser infeft, preferred to a subsequent arrester, although the appriser had suffered

IN a double poinding, at the instance of the tenants, possessors of the lands of Dryup, who were distressed for the duties of the said lands by the Sheriff of Forest on the one part, who had comprised the said lands, for a just debt, from Scot of Dryup, and, conform to the comprising, was heritably infeft in the same lands divers years before the crop 1626, which was now drawn in question; and