1769. *February* 7. CAMERON and FARQUHAR, Merchants, London, *against* WILLIAM WATT and COMPANY, Merchants in Kirkwall.

ARRESTMENT—FOREIGN—MULTIPLEPOINDING.

A. of London, arrested, in the hands of B in Scotland, a sum due by B to a debtor of A. Afterwards, B being in London, his person was attached by the assignees of the common debtor, and he was compelled to find bail to appear in an English Court. A furthcoming being brought by A, *found* that B must pay the sum arrested, to him, and that he was not bound to find caution to relieve B of the English attachment.

ANDERSON, a merchant in London, was indebted to Cameron and Farquhar. Anderson failed, and a commission of bankrupt was issued against him. Cameron and Farquhar arrested, in the hands of Watt and Company, merchants in Kirkwall, a debt due by them to Anderson, and brought a forthcoming. Watt and Company raised a multiplepoinding, and stated that they were ready to pay the debt, but that, since the arrestment of Cameron and Farquhar, one of their partners, John Watt, happening to be in London, his person had been attached, at the instance of the assignees of Anderson the bankrupt, for payment of the debt in question: and he had been compelled to find bail to present himself in an English court. It was further stated, that the assignees had refused to withdraw their attachment, although notice had been given them of the previous proceedings in Scotland, in which they might have appeared for their interest. It was therefore insisted, by Watt and Company, that, before decree of payment could be pronounced in favour of Cameron and Farquhar, they should be ordered to find caution to relieve them of the English attachment, and its consequences. The Lords, however, refused this, and "preferred the arresters without caution."

The following opinions were delivered:—

AUCHINLECK. As the arrestments in Scotland are prior to the attachment of John Watt's person in England, we cannot regard that attachment, but must go on in giving execution to the diligence of our own law.

MONBODDO. The arresters should find security to indemnify the debtor, if he is obliged, in consequence of the attachment, to pay the debt at London.

PITFOUR. Debts due by a company in Scotland are Scots debts, and affectable in Scotland; and, therefore, this arrestment is a good diligence, and we must enforce it. There can be no doubt as to the preference: but here is a new circumstance not hitherto determined, namely, an attachment of the debtor in England, after the date of the arrestment in Scotland. There are principles to determine this: *Exceptio rei judicatæ* is good all the world over: so it was found in the case of *Captain Hamilton* against the *Dutch East India Company*, where a payment, in virtue of an unjust decree of the Court of Batavia, was found to afford a good defence against second payment. The courts in Eng-

land will certainly follow this rule, and not find Watt liable for money already arrested in his hands by the course of law. As to finding security, I do not relish it. We are not to take notice of what happens in another country: The ordering security to be found would look as if we were doubtful of our own powers; and might be so held in England: this might afford an argument for the English judges to find the attachment effectual.

Kaimes. Here is my difficulty: Had the debtor paid to the assignees before the process came on here, his *bona fides* would have exempted him from second payment. But now there are two attachments at once; one in this country, one in England. Shall we ordain this man to pay here, and, at the same time, leave him to pay again in England?

President. There is a regular arrestment and a forthcoming. How can we suffer goods to be drawn out of this country by means of the accident of the debtor being attached in England? It is said he may pay twice. No: I will not suppose that judges in England will do otherwise than we ourselves would do in such a case: We would set the man at liberty. To make him pay twice would be a monstrous injustice. I cannot doubt of his defence being found good. It is below the dignity of this court to make the creditor-arrester find caution. The ordering caution to be found would give a handle for misleading the English judges to do wrong.

Gardenston. Arrestment and forthcoming are equivalent to payment; and we can never suppose that the English judges will disregard the legal defence of payment.

On the 7th February 1769, "The Lords preferred the arresters without caution."

Act. J. Douglas. *Alt.* A. Crosbie. *Reporter,* Stonefield. *Diss.* Kaimes; and, as to not finding caution, Monboddo.

1769. *February* 10. Thomas Dundas of Fingask *against* Mrs Agatha Drummond of Blair.

[*Faculty Collection, IV.* 335; *Dictionary,* 15,035.]

WARRANDICE—SUPERIOR AND VASSAL.

Heir of one selling with Procuratory and Precept, not bound to enter with the superior.

Auchinleck. I have always considered that when a man sells an estate, with an obligation to infeft, *a me,* or *de me,* and, for this purpose, grants procuratory and precept, that this is a good and regular obligation; but, as soon as he grants the procuratory and precept, he is *functus,* and the disponee has right to use either the one or the other. If the disponer had not a complete title, there is recourse against him; but, if he had, he has no farther concern. Why should we oblige a disponer to keep up lands in his rights after he has sold