

debtors, in this sum controverted, because he was made assignee before these other parties arrestments, and had done diligence before them, the common debtor being his lawful debtor, as is confest by him in his assignation; and the arresters *answering*, That they should be preferred to the assignee, seeing the assignation was made by a bankrupt *in meditatione fugæ*, there being no debt which the assignee can instruct was owing to him; likewise, he was then the cedent's servant, and so presumed a confident person; and the assignee opposing his assignation thereto; the LORDS preferred the assignee to the arresters, the assignee giving his oath that the cedent was his true debtor the time of the assignation, in as great sums as that money assigned; and he giving so his oath, the LORDS found no necessity, that the assignee should be holden to qualify by any other writ, that the cedent was his debtor, in respect of the act of Parliament, which admits that probation by the parties oath; for, as when any party buys lands, or goods, from any person who becomes bankrupt, the alienation cannot fall, albeit the buyer cannot instruct, by a preceding writ, that the seller was his debtor in any sums of money, the alienation being done *bona fide*; even so in this case.

No 23.

Clerk, Hay.

*Fol. Dic. v. 1. p. 178. Durie, p. 895.*

1687. July.

ADIE against SCRIMZEOR.

THE Earl of Seaforth being debtor to James Clerk of Wright's Houses, in a certain sum by bond, which was assigned to Mr David Scrimzeor; and, at the same day that the assignation was intimate, Bailie Adie, another creditor of James Clerk's, arrested the sum in the Earl of Seaforth's hands. And it being *alleged* for the assignee, That he ought to be preferred, because the intimation did condescend upon a particular hour and day upon which it was intimate; whereas the arrestment is only general, that it was laid on that day, but did not condescend upon the hour. *Answered*, That the arrestment being general, it might have been as well before as after the intimation; and he produces a declaration by the Earl of Seaforth, the common debtor, that the arrestment was two hours before the intimation of the assignation, and therefore he ought to be preferred.—THE LORDS ordained the arrester and assignee to come in *pari passu*.

No 24.

An arrestment and the intimation of an assignation being on the same day, only the intimation mentioning the hour; and the common debtor having declared, under his hand, that the arrestment was two hours prior to it, the Lords ordained them to come in *pari passu*.

*Fol. Dic. v. 1. p. 178. Sir P. Home, v. 2. No 949.*