

Arrestment affects only bygones and the term current.

1612. *March 23.* MR ROGER MOWAT *against* WALTER DICK.

No 88.

ARRESTMENT found null of the Whitfunday term duty, because made in February before the term.

Kerse, (ARRESTMENT.) MS. fol. 235.

1624. *March 23.* BROWN *against* TENANTS and HALIBURTON.

No 89.

IN an action pursued at the instance of one Brown, for making of the mails and duties of a tenement of land in Edinburgh furthcoming, which was arrested in the tenants hands, for satisfying of a debt owing to him by his debtor, master to the tenants, and heritor of the land; wherein compeared one Haliburton, who had acquired, from the said heritor, infestment of the said tenement, before the pursuer's arrestment, for debt owing to the said Haliburton, and who had set a back-tack to the heritor, the common debtor, for yearly payment of a certain duty, with provision, if he failed in payment two terms, the tack should expire; and the land remain with him irredeemably, whereupon he had obtained a declarator, decerning the tack to be expired; which declarator was obtained in December 18. 1623, and the summons and action was intented before the term of Martinmas the same year 1623, which term's mail was only controverted in this process; wherein the LORDS, notwithstanding of the date of the summons, and subsequent declarator, preferred the pursuer, who had arrested before the date of the said summons, and would not draw back the declarator, to give the excipient right to the said term's duty preceding his sentence; but found, that it should begin only to take effect for the subsequent terms, notwithstanding of his heritable right preceding the arrestment: And the LORDS found, that the arrestment affected the mails of that term, albeit it was laid on before the term of payment, and before the same could be fought from the tenants, seeing the same was running and *dies cessit* the time of the arrestment.

Arrestment affects the current terms rent, though laid on before it could be demanded from the tenant, because *dies cessit*. See *Lelly against Cunningham*, No 91. p. 766.

A&t. *Mowat.*Alt. *Haliburton.*

Fol. Dic. v. 1. p. 57. Durie, p. 122.

1628. *January 18.* L. HALKERTON *against* FALCONER.

No 90.

IN a double poiding betwixt L. Halkerton and Hew Falconer, commissary of Murray, who both acclaimed from the Laird of Allardes, certain sums of money,

Arrestment of the annual-rents of an

No 90.
 heritable sum,
 though made
 both for
 terms to
 come, and for
 bygones, was
 sustained only
 for bygones,
 and the cur-
 rent annual-
 rents.

addebted by him to Falconer of Ballandro, who was common debtor to both the parties, the one, viz. Halkerton seeking the same from Allardes, as assignee made thereto by Ballandro; and the commissary seeking the same, as a creditor, who had arrested in Allardes' hands, and had obtained decret against him, to make certain of the annualrents of the principal sum furthcoming to him, upon Allardes' oath and confession, whereto he had referred the debt, and whereupon he had obtained decret before the Lords, in June 1627, for so many of the annualrents, which Allardes then in his oath had granted him to be addebted; for the principal sum was not arrestable, being owing by an heritable bond. Halkerton's assignation was before the arrestment, which arrestment was executed in *anno* 1625, and the annualrents controverted for, were for the years 1626 and 1627, and so for the two crops, after the year wherein the arrestment was executed, albeit in the execution, both all the bygone annualrents, and also the annualrent for all terms and years to come were arrested.—THE LORDS found, That the arrestment could not extend to any annualrents of any years to come, subsequent after the time of the executing of the arrestment, albeit the same was *specific* made, both of bygones, and in time coming; for they found, That the annualrents of years thereafter could not be arrested, by that arrestment, and that the same could not extend thereto, but only to the annualrents owing, and which the debtor was owing at the time, or to such terms as were begun, and running at that time, and could not comprehend terms which began after the arrestment; and therefore preferred the assignee to the arrester, notwithstanding of his sentence, which decerned him to be payed by Allardes, of these terms foresaid, and superceding the execution, while the terms decerned should be past; and found the assignation preceding the arrestment to be sufficient, for the assignee's probation, albeit it had never been intimated, seeing the assignee had received payment from Allardes as assignee for divers terms of the annualrent, after his assignation, and before the arrestment, which was as good as an intimation; neither was it respected, what the arrester alleged, that the debtor's self had received payment divers years of the annualrent from Allardes, since Halkerton's assignation, which he alleged to be a presumption of simulation betwixt the cedent and assignee; which was repelled, in respect of divers other years since, and before the arrestment, paid to Halkerton, as assignee; and so the assignee was preferred.

Act. Hope & Falconer.

Act. ———.

Clerk Gibson.

Fol. Dic. v. 1. p. 57. Durie, p. 329.

No 91.
 Found in conformity with
 Brown a-

1669. July 28.

LESLY against CUNNINGHAM.

LESLY having arrested certain sums for payment of a tack-duty due to him: It was *alleged* for the party, in whose hands arrestment was made, That the arrest-