

1628. December 2. CUMING against CUMING.

No 32.

FOUND, that an arrestment of farms cannot be of force, being made before the term of Martinmas, if, *meâs tempore*, the lands be comprised, and the compriser infest before the term.

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

1629. November 24. LINDSAY against L. LAURISTON.

No 33.

A sum not bearing expressly annualrent, but a certain quantity of victual yearly in place of annualrent, found arrestable.

SEVERAL sums, owing by the Laird of Lauriston to one Fairweather, being arrested by Lindsay, creditor to Fairweather, and Lauriston pursued to make the sum furthcoming, and he *alleging*, That he could not be found debtor therein by the contract produced, which was a tack, set by him to Fairweather, of lands for payment of a yearly duty, which duty the contract bore, ' That the L. Lauriston ' allowed to Fairweather, and that for satisfaction of the annual of 1000 pounds ' owing by him to Fairweather, and that for the space to come, while Candlemas ' after the contract, which Fairweather accepted ;' and before the Candlemas the arrestment was laid on, which contract Lauriston *alleged* could not make him debtor at the time of the arrestment ; for albeit it have might been, that he was debtor the time of the contract, yet it would not follow, that he still continued debtor at the time of the arrestment, and the paying of annual at a term which was not expired, at the time of the arrestment, will not inforce that he remained debtor of the principal sum : therefore he ought to prove that he was debtor otherwise at the arrestment of the sum, seeing he might transact with the party therefor : And further *alleged*, That the sum was not arrestable, being heritable, by the same contract, which appointed annual to be paid therefor. This *allegance* was repelled, for this confession emitted in the contract, subscribed by the parties, was found enough to make him debtor at the time of the contract, which behoved still to burden him, except he would prove it were paid before the arrestment ; and it was found not to be an heritable sum, for the victual allowed to the creditor for his annual to such a time, made not the sum heritable, except it were proven, by the tenor and conception of the bond, that it was heritable.

Act. ———

Alt. Mowat.

Fol. Dic. v. 1. p. 55. Durie, p. 469.

1633. March 20. SIMPSON against WHITE.

No 34.

A sum destined to be laid out upon annualrent, after

ANTHONY WHITE being obliged to his son-in-law, Alexander Blair, in the sum of 1000 merks, to be paid the first term after his decease, and to be employed, at the payment, by the said Alexander Blair, upon annualrent. This sum being

arrested by John Simpson, creditor to Blair, the LORDS found, That it was arrestable, albeit it was destined to be employed by the said Blair at the term of payment; and found it not an heritable sum, as not subject to arrestment, in respect of the said destination, seeing there was no annualrent conditioned to be paid therefor by the said Anthony: And also found, That sentence might pass therefor, albeit the term of payment was not come the time of the arrestment, but that it was conferred to a term after Anthony's decease, and albeit Blair himself could not seek it before the term; for this cause was considered as a declarator in favours of the arrester, to prefer his diligence, and superseded the execution of his decret while the term of payment should come; the pursuer's sum was owing by an heritable bond bearing annualrent yearly. Also the LORDS found, That this sum arrested should be made forthcoming to the pursuer at the term of payment, not only for the principal sum addebted to the pursuer, and the annualrents owing the time of the arrestment, but also for all the annualrents thereof in time to come, ay and while the foresaid term of payment were come, to the which the said sum arrested is conferred to be paid, and that the pursuer needed not to arrest yearly hereafter for the annualrents that shall be owing. (*See HERITABLE and MOVEABLE. See LEGAL DILIGENCE.*)

A.G. *Gilmor.*Alt. *Barclay.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 55. Durie, p. 681.*1634. *July 29.* L. LUGTON *against* CREDITORS OF DISHINGTON.

L. LUGTON being debtor to William Dishington in a sum to be paid at a term, and to pay annualrent therefor yearly after the term, while it were repaid; which sum being arrested by a creditor of the said William Dishington's, who pursuing to make the same forthcoming, conform to the arrestment, it was found, That the said sum, owing by the bond, of the tenor foresaid, was heritable, and consequently not being made moveable by a charge, preceding the arrestment, it was not arrestable.

*Fol. Dic. v. 1. p. 55. Durie, p. 735.*1635. *January 29.* KER *against* KNOWS.

ONE Ker, donatar to Robert Mudie's escheat, after general declarator thereon, and also after special obtained against one Craw, debtor of a sum to the said Robert Mudie; he arrests in Mr Christopher Knows' hands the like sum, owing by him to the said Craw, and pursues to make it forthcoming. And the defender *alleging*, That the sum was not arrestable, because the same was owing by a bond, the term of payment whereof was Whituesday; and in case of failzie then of

No 34.

a debtor's death, was found in the mean time arrestable.

No 35.

A sum was payable at a term, and the debtor bound to pay annualrent after the term till payment. This sum, as being heritable, was found not arrestable.

No 36.

A sum, in the situation of the above case, arrestable before the term of payment.