

No 90.
heritable sum,
though made
both for
terms to
come, and for
bygones, was
suffained 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-

ment could not reach any further than for the tack-duty arrested, which was due the time of the arrestment, but not for any term following the arrestment, because arrestment being a legal execution, can no more proceed upon a debt, before the term that the debt be due than apprising; and further *alleged*, That they had made payment of the subsequent terms to the debtor, which they were in *bona fide* to do, knowing no law nor custom to the contrary.

THE LORDS repelled the defence, and found the arrestment to be valid for that term's duty that was then running, and found that the arrestment was rather like to an inhibition than an apprising, which gave present payment.

Fol. Dic. v. 1. p. 57. Stair, v. 1. p. 649.

. Gosford reports the same case thus:

In an action to make arrested goods furthcoming at the instance of the relief of Mr George Lelly, who had arrested in the hands of Duke Hamilton the sum of money due to Cunningham, who was cautioner in a tack for the tenant: The question was, That the pursuer had arrested for a term's duty which was only *in cursu*, and the term not come, before which it was not due.—It was *alleged*, That the tenant himself not being liable, neither he, far less his cautioner, could be discerned to make payment as debtor; and consequently, cautioner's money could not be arrested.—THE LORDS, notwithstanding, did find the arrestment valid, in respect that the subsequent term's duty was constituted by a preceding tack, for which arrestment might be used, as being only *pignus prætorium*, which did resolve in a security, that the term of payment being past, the sums arrested might be made furthcoming; and in law *ubi cessit dies licet nondum venit*, such diligences are allowable.

Gosford, MS. p. 78.

1705: January 31.

JOHN CORSE, Writer, *against* GEORGE MASTERTON, Portioner of Bothkenner.

THE deceased George Masterton infests Margaret Dalrymple, his spouse, in the liferent of some houses. After his death she marries one Muirhead; and he being debtor to Corse in a sum of money, Corse arrests the rents in the tenants hands, as falling under his debtor's *jus mariti*. George Masterton, the first debtor's heir, and the fiar of the lands, compares, and *alleges*, Corse's arrestment is null, because the subject arrested was no debt, and had no being at the date of the arrestment, because the existence of the debt depended on the two joint lives of the husband and the wife; and if any of the two had died before the term, there was nothing due, and so the arrestment fell to the ground; and what makes it due, is the liferentrix outliving the term, and till then no arrestment could affect it; for, before that, it was a *non ens*, and the arrestment had no foundation.

No 91.

gainst Tenants, No 89: p. 765.

No 92.

An arrestment was laid upon a wife's annuity, payable out of land, for a debt due by the husband, who had right to the annuity *jure mariti*. The arrestment found to affect even the current term's rent.