

1709. June 7.

CAPTAIN JOHN WIGHTMAN *against* The CREDITORS of BONHARD.

CAPTAIN WIGHTMAN being creditor to Walter Cornwall of Bonhard, arrested, in the hands of the directors of the African Company, his debtor's proportion of their capital stock, after the article of the Union relating to the Company was approved in Parliament, and pursued a furthcoming; compearance was made for some other creditors, who, as assignees to the gift of the common debtor's escheat, craved to be preferred to the arrester, in respect their gift was declared long before the date of the arrestment. Seeing the stock of its own nature bore no annualrent; and interest is become due only by the treaty after the escheat fell, consequently the stock must fall under escheat; at least the annualrents thereof, as come in place of the profits, belong to the donatar.

*Alleged* for Wightman; The capital stock of the African Company fell not under escheat, because it was not like shares in other private companies or manufactures, that are under the absolute disposal of the owner; but was designated and mortified by act of Parliament erecting the Company to a perpetual use; and also, at the time of the denunciation, was exempted from all escheat and forfeiture by an express clause in the statute. And though eventually it is now upliftable, it was not originally so; nor even at the time of the gift. Again, annualrent being now given for it, from the time of the advance, it is at least of the same nature with bonds bearing annualrent; and so cannot in any view fall under escheat.

*Answered*; Suppose the Company had stood, and there had been profits, these could never have fallen under escheat, by reason that the act of Parliament allows such profits only to be affected with the diligence of creditors; but *ita est* there are no profits; and so nothing can come in place thereof; the equivalent money being stipulated betwixt the Scots and English in consideration of the rights and privileges of the Company then to be extinguished.

*Replied*; We are not in this case to notice, upon what consideration the equivalent money was given by England to Scotland; but upon what view the Scottish Parliament refunded to the proprietors of the Company their advanced shares, with interest at five *per cent.* viz. to compensate their loss by wanting the interest of their money, which would have fallen under escheat, had the same been current upon any other fund of credit.

THE LORDS found, That the stock of the subject in controversy was arrestable, and belonged to the arrester; but that the annualrents thereof, constituted by act of Parliament in place of the profits, fell under escheat, and belonged to the donatar.

No 17.

The arrester of a share of the stock of a Company, was preferred to the extent of the share arrested, in a competition with a donatar, whose gift was declared before the arrestment; but the annualrents of the stock, constituted by act of Parliament in lieu of the profits, found to fall under escheat, and to belong to the donatar.