

stitutes what is called the law of nations, and to which the municipal law must conform; but, where subjects of the same country deal together, they being subject to the municipal law, ought not to be favoured in departing from the known established rules; hence it is, that bills are entitled to many privileges, which no other form of obligation in use amongst the subjects of this country are entitled to, but which ought not to be extended to any other writing.

THE LORDS preferred the arrester.

C. Home, No 113. p. 182.

No 48.

1739. *January 19.*

CREDITORS OF BERNARD CLUNIES *against* SINCLAIR and Her HUSBAND.

THE question occurred with the regard to a bond due to a married woman, the annualrents of which belonged to her husband, if an arrestment for his debt, laid on in the debtor's hands, did affect the *jus mariti*, or the annualrents only due at the date of the arrestment?—THE LORDS found that the arrestment carried no more than the annualrents that were fallen due, and the current term; and the reason given for it was, that arrestment can carry nothing but what is due to the common debtor, when it is laid on, not being of the nature of an inhibition to affect *adquirenda*; that the proper diligence in this case, is an adjudication against the husband, in whom the *jus mariti* subsists.

Fol. Dic. v. 1. p. 55.

No 49.

In what manner an arrestment affects the *jus mariti*. Decided in conformity with No 39. p. 702.

* * * The same case is thus reported by Lord Kilkerran.

It had been formerly determined between John Spruel, and the Laird of Grant, *anno* That a creditor of the husband's arresting in the hands of the wife's debtor by bond, carried not only the annualrents then due, and the current term, but that the arrestment carried the *ipsum jus mariti*. But the contrary was now determined and found, that it carried no more than the annualrents fallen due at the time of the arrestment, and the current term.

Arrestment affects not *acquirenda*; and the proper diligence to carry the *jus mariti*, is adjudication against the husband.

Kilkerran, (ARRESTMENT.) No 4. p. 36.

1739. *June 22.*

MACKENZIE of Dundonald, *against* JOHN TUACH.

TUACH having right to the reversion of some lands which he had wadset, assigned one moiety of the reversion-money (in terms of the back-bond) in the hands of Bailie Frazer, on the 11th March 1738; and, in November thereafter,

No 50.

Money assigned for the redemption of a wadset, found not to

No 50.
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made furth-
coming for
the reverfer's
debt.

he executed a declarator of redemption, in which he obtained a decret before the Lord Ordinary in terms of his libel. Betwixt the date of the confignation, and executing the declarator, Mackenzie of Dundonald, as creditor to Tuach, arrefted the configned money in the Bailie's hands, and infifted in a furthcoming.

It was *pleaded* for Tuach the reverfer:—That he has no property in the money configned, confidering it as a fpecies or fungible, nor any other intereft therein, than that of a conditional creditor to the confignatar, in cafe he fhall not prevail in his declarator, as the wadfetter is likewise, in the event that by the declarator the order is found lawfully proceeded in; and, therefore, pending the condition, no furthcoming can proceed; becaufe, till then, it is not known who is the creditor: and if, as in this cafe, the order fhall be found lawfully proceeded in, fo as that the reverfer prevails in the declarator, it is certain, that the reverfer is not creditor, and that the wadfetter is. But there is another reafon why an arreftment cannot affect a fum configned, either for the debts of the reverfer, or wadfetter, to wit, that after the order, and till declarator, it is deemed heritable, and of the fame nature with the right to be redeemed; fo fays Stair, *lib. 3. tit. 1. Affig.* page 392; Spotifwood's *Practics*, 25th November 1624. Hepburn.*

Argued for the purfuer: The reverfer has no legal intereft to plead the money does not belong to him; therefore it is *jus tertii* for him to make any objection, though perhaps it might admit of a different confideration, were the wadfetter in the field laying claim to it.

2do, Nothing feems more firmly eftablifhed in law, than that the property of a fum configned, in order to redemption, remains with the configner until the wadfet be loofed, either by a decret of declarator, or by the wadfetter's accepting of the fame, and renouncing his real right in confequence thereof; upon this footing it is that the hazard of the confignation lies upon him. It is further clear, that there is not fo much as a *jus quæfitum* to the wadfetter by the confignation: It is in the power of the reverfer to pafs from his order, and uplift the configned money: In this all our authors are clear; it fhall fuffice to cite Stair, *tit. Wad. § 20*; 21ft January 1673, Nicol againft Laurie†. If then it be fo, that the property of a configned fum remains with the configner, and that he can exerce all acts of property upon it, by uplifting the fame, and difpofing thereof at his pleafure, how can the confequence be avoided, that it may be attached by his creditors, and, particularly, that it may be made furthcoming upon an arreftment? *2do*, The arreftment was laid on before the procefs of declarator was raifed or executed, while indifputably it was in the reverfer's power to pafs from his order, and uplift his own money; and, if fo, it was not in the power of the common debtor, by choofing thereafter to infift in a declarator, to prejudice his creditor, or difappoint the arreftment once legally eftablifhed.

Answered: That the money might perifh to the configner, arifes from the paction contained in the letter of reverfion; therefore it is no juft confequence that the property was in the configner; and it frequently happens, as in the cafe

* Hepburn againft Hay, Spotifwood, p. 16 *voce* CONSIGNATION in this Dictionary.

† Stair, v. 2. p. 152. *voce* RIGHT IN SECURITY.

of mandates not duly followed out, goods perishing will not perish to the owner, but to the mandatar, who, by the obligation arising from law, had equally transferred the hazard upon himself, as the reverser does by paction. And, with regard to the second observation, *scil.* That the arrestment barred the declarator, it was *answered*, If the reverser was not purely creditor, but only such *sub conditione*, the arrestment behaved to follow the nature of the subject arrested, which being *ex eventu* declared to be the wadsetter's, and not the reverser's, the condition was purified; so as the arrestment could affect nothing, and be no *medium impedimentum*.

THE LORDS found, That in this case the arrestment did not affect the consign- ed money, without prejudice to insist, &c.

Fol. Dic. v. 1. p. 56. C. Home, No 122. p. 196.

1740. February 13.

THE CREDITORS OF LUDOVICK GORDON, *against* SIR HARY INNES.

A BILL being indorsed in trust for behoof of the common debtor, an arrest- ment, laid in the hands of the trustee, found effectual to carry the sum in the bill; and therefore was preferred to a second arrestment laid in the trustee's hands, after he got payment of the bill, and thereby became debtor in a liquid sum.

Fol. Dic. v. 1. p. 56.

* * The same case is thus reported by Lord Kilkerran.

Jan. 15. 1740. WHERE bills were drawn by Ludovick Gordon, on certain of his debtors, payable to one Falconer, which, by Falconer's oath, were instructed to be for the drawer's behoof; and Sir Hary Innes, as creditor to Ludovick the drawer, had arrested in Falconer's hand after the draught, but before Falconer had recovered payment from the debtors; the question was, If these arrestments in Falconer's hand did affect the sums in the bills? *Ratio dubitandi*, As Falconer had not properly the right to the money in him, but was only factor for recover- ing thereof, though he was liable to diligence for recovering the money, yet he was not debtor to Ludovick Gordon, till he had recovered the money.

Notwithstanding, the LORDS found 'That the arrestments in the hands of 'Falconer' did affect the sums in the bills,' for this reason, that, by the very draught of the bills by Ludovick Gordon upon his debtors, the right of the mo- ney was transferred to Falconer, who thereby became liable to account; and; for that reason, arrestment in Falconer's hand, was not only thought *habile*, but indeed to be the proper method of affecting the money; though it was at the same time observed, that had an arrestment been used in the hands of the debt-

No 50.

No 51.

An arrest- ment in the hands of a trustee, found effectual to carry the sum in a bill, in preference to an arrestment in his hands after the bill was paid.