

in the same manner as a man, having a servitude upon his neighbour's moss, may spare his own, and cast all his peats in the servient moss.

The Lords found, That Culdares behoved to use his servitude *secundum arbitrium boni viri*, and therefore could not let his own grass, and drive his whole cattle upon the forest.

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1742. November 18. CREDITORS of ROBERT and JAMES ROBERTSONS, Merchants in Glasgow.

[Elch., No. 20, *Arrestment* ; Kilk., No. 10, *ibid* ; Rem. Dec. No. 33.]

THE specialties of this case are carefully to be observed :—1<sup>mo</sup>, At the time of the arrestment, the persons for whose debt the arrestment was laid on, were bankrupts, and consequently no longer partners ; 2<sup>do</sup>, The arrestees were managers of the venture ; 3<sup>tio</sup>, The arrestment affected only the profits of the current venture. So that it is not yet decided,—1<sup>mo</sup>, Whether, if the copartnery had been yet subsisting with respect to the Robertsons, the arrestment would have been competent, though it is probable, from the reasonings of the Lords, that they would have found it competent ; 2<sup>do</sup>, It is not decided, if the Robertsons had been themselves managers, whether an arrestment could have been at all laid on, or in whose hands, or what effect it could have had ; 3<sup>tio</sup>, It is not decided whether an arrestment, in such a case, could affect any more than the share of the stock and the profits of the current venture, and whether it could be extended to the profits of subsequent ventures.

June — 1748. The Lords found, That the arrestment of company goods in the hands of a factor, for the debt of a copartner, carried only his share of the profits upon a count and reckoning.

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1742. December 8. PATERSON against ———.

[Elch., *Indefinite Payment*.]

FOUND, that indefinite payment is not to be imputed *in durioorem sortem*, according to the rule of the Roman law, but, on the contrary, it is to be imputed towards the payment of that debt which is either worse secured, or bears no interest ; because it cannot be supposed that the creditor would accept of a partial payment of the debt best secured and yielding most profit, without doing immediate diligence for the other debts ; and therefore, it is reasonable that the imputation should be made by the law, in the same manner as it probably would have been made by the express agreement of parties. On this principle, the Roman law, where there are interests due, imputes the payment first to the satisfaction of them before the principal.

This decision was unanimous.