

No. 12.
which by the contract was declared not to be arrestable, was found arrestable at the instance of the proprietor's creditor, in order to oblige the directors to transfer the same in the ordinary way in favour of the arrester.

hands of the Directors and the Cashier, he pursued a forthcoming, and a declarator of right to the subject.

Alleged for the defenders: 1. Whatever come of the subject arrested, they cannot be decerned personally to make forthcoming. 2. The act 1695, establishing the Company, declares, that no part of the joint stock shall be liable to arrestment, and that the property shall only be conveyed by transfers in their books, except the share of profit belonging to any particular member, which may be affected by the real diligence of creditors, and arrestment is not a real diligence.

Replied for the pursuer: 1. That he doth not insist to have the defenders liable personally, but only *ratione officii*. 2. Though voluntary conveyances can only be made by transfers, the subject may be affected by the real diligence of creditors; and arrestment (which is a *nexus realis* upon the subject) is certainly such a habile diligence. Albeit for the general advantage of the nation, and encouragement of that trade, the Parliament declared the stock not upliftable; *res devenit in alium casum*, the Company being dissolved *in diem* by law, and the stock with interest to be paid unto the respective adventurers and proprietors.

Duplied for the defenders: The money to be paid in for the capital stock and interest not being yet in the company's hands, no arrestment thereof can be effectual.

Triplied for the pursuer: Arrestment upon a subject inchoately habile, subsists after it becomes fully habile; as a creditor arresting a sum due upon a wadset before redemption, is preferable to a second arrester after redemption, Dirltoun's Questions, Tit. ARRESTMENT OF CONDITIONAL DEBTS. Arrestment of the price of lands after a verbal agreement, was sustained after the bargain was reduced in writ, Stair, Lib. 3. Tit. 2. N. 29; and there are many decisions sustaining arrestment, *currente termino*, of what may be due to a liferentrix, upon her surviving the term.

The Lords found the pursuer's arrestment to be a habile diligence for affecting his debtor's share both principal and interest in the African Company, in order to oblige the Directors to transfer the same in his favours after the ordinary form.

Forbes, p. 153.

* * * Fountainhall's report of this case is No. 43. p. 707. *voce* ARRESTMENT.

1742. November 19.

NEILSON against RAE.

No. 13.
Nature of stock.

A PARTNER in a company having become bankrupt, some of his creditors used arrestment in the hands of the company; and he dying soon after, others confirmed his interest in the company. In a competition of these creditors, the nature of a partner's stock in a trading company was the subject of much consideration, and

it was particularly questioned, whether it was a *corpus* subject to arrestment, or only a right or claim, which is neither the subject of detention nor custody, and consequently not affectable by that diligence.

This last, which was the argument urged against the arresters, was thus answered. A partner's stock is a proper *jus crediti*, which he purchases with his money that goes into the company's stock, similar to a bond of borrowed money purchased with a sum, the property of which is transferred to the debtor; differing only in the following particular, that, instead of a certain yearly profit, the profits are casual, depending on the success of the company-trade. That the company is the debtor; for a proper action lies against the company, at the instance of every partner, to make his stock effectual, whether by accounting for the profits, or by delivering to him a proportion of the company's stock. Were not the company debtor to each particular partner, no action could lie against the company *communi dividundo*; nor an action to account for profits, but only against the intrmitters with the company's stock and profits. Hence it was inferred, that a partner's stock, being properly a company-debt, is arrestable, and may be ordained to be detained by the company till called for in an action of forthcoming. The Lords, considering that a right of partnership after a partner's death may be confirmed, to the end of pursuing a division of the company's effects, were of opinion, That an arrestment, with a decree of forthcoming, will carry every subject which can be confirmed, and found accordingly. But here it was not understood, that an arrestment can carry a right of partnership to any other effect than to pursue a division. The court was not of opinion, that an arrester is entitled to be a partner in place of his debtor. Hence it may be inferred, that an arrestment of a partner's stock will not carry the benefit of any new adventure begun after the date of the arrestment.

Fol. Dic. v. 4. p. 285. C. Home. Rem. Dec. Kilkerran.

* * This case is No. 52. p. 716. *voce* ARRESTMENT.

SECT. V.

How far a Partner can bind the Society?

1673. July 22.

SWYNE against ABERNETHY

THERE being a bark belonging to John Swyne and William Abernethy, John pursues for the half of the value of the bark. It was alleged for Abernethy, that

No. 14.

A partner in a ship having