

No 52. furthcoming, the profits arising after the arrestment are transferred with the stock, in like manner as annualrents are which arise after arrestment of the bond.

Upon this debate, the LORDS found, ' That it was competent for the creditors of Robert Robertson to affect his interest in the company by arrestment, and that the arrestments in the hands of the remaining partners did habily affect the same, though the company's effects were, at the date of the arrestments, in the hands of the company's supercargoes at sea, or of their factors abroad; and found the same liable to be made furthcoming by the partners to the creditors, so far as the same had been made good to the company by their supercargoes or factors. (*See SOCIETY.*)  
*Kilkerran, (ARRESTMENT.) No 10. p. 40.*

1742. December 9.

ELIZABETH MACKENZIE, Relict of PATRICK DURHAM, against GRAHAM & Others.

No 53.

FOUND that arrestment in the hands of a purchaser, at a judicial sale, is not an habile diligence to affect the share of the price for which the creditors are ranked, in respect that, notwithstanding the sale, the creditors debts stand still secured by adjudication till payment.

*Fol. Dic. v. 3. p. 40. Kilkerran, (ARRESTMENT.) No 11. p. 42.*

1743. February.

CREDITORS of MR JAMES HOG, Lecturer in the Tron-Church, against The TOWN of EDINBURGH, and the said JAMES HOG.

No 54.

Whether the annualrents of a sum mortified for the behoof of a lecturer in a church, are arrestable for his debts?

JAMES HOG being received lecturer in the said church, was thereby entitled to the annualrents of L. 1000 Sterling yearly, which had been mortified for that purpose; his creditors arrested the same in the hands of the Magistrates.

In the furthcoming, Hog appeared, and *pleaded*, That the subject arrested being a fund appropriated and set aside for a certain purpose, could not, even by legal diligence, be diverted to any other purposes, so as to disappoint the intention of the mortification. Indeed, where an obligation is granted to a man entirely for his own behoof, and where the debtor has no interest, other than to pay securely, such a subject is attachable by all sort of legal diligence; but the case is quite different, where an obligation is granted *ad certum effectum*, and where the granter has an interest to see the money applied to the purposes for which the same is destined. In that case, as the money cannot be applied to other purposes, it cannot be affected with legal diligence, *e. g.* A servant's fee is not arrestable, because it is appropriated to the maintenance and support of the servant, without which he would be incapable to perform his work; the master has a direct interest to apply the money this way, that he may have the benefit of the servant's work; and the servant has an interest, because he is bound to perform his work, which he cannot possibly do if he has not his wages: the application of which to the present question is obvious. It is true, this doctrine admits of a limitation; if the

subject destined and set aside be more than sufficient to answer the purposes, the superplus may be attachable by creditors, because the mortifier or debtor has no further interest than that the work be performed: And therefore, if it shall be thought that L. 50 is more than a sufficient yearly aliment to Hog, he is willing the same be restricted to what lesser sum shall be judged may suffice for that purpose. See 18th March 1707, Mollison supplicant, (Forbes, p. 155. *voce* PERSONAL and TRANSMISSIBLE.)—9th July 1668, Boag, (Stair, v. 1. p. 550. *voce* PERSONAL and TRANSMISSIBLE.)

THE LORDS remitted this cause to an Ordinary; but what was the issue of it, does not appear from any papers in the collector's hands.

*C. Home, No 233. p. 380.*

1745. *January 22.* NEILSON and MURDOCH, *against* COLQUHOUN and RAE.

JAMES ROBERTSON, merchant in Glasgow, named his uncle, Robert Robertson, merchant there, his executor; and, of the same date, specially disposed to him his whole subjects, for the behoof of his children.

It appearing, on James's death, that he was broke, Robert being in the same circumstances, gave up the whole effects to the creditors, who chose John Neilson, merchant, and Robert Murdoch, writer in Glasgow, their trustees, and he having died, the said trustees confirmed his effects, and also those of James, notwithstanding his disposition to his uncle was special, the same being in trust for his children.

On the same day of the surrendry made by Robert, Agnes Colquhoun and John Rae of Little Govan, creditors of both the Robertsons, arrested in the hands of their partners in trade; whereupon it came to be a question, How far arrestments laid on for debts as Roberts; and of effects as belonging to him, could affect James's interest in the copartnery.

THE LORD ORDINARY, 18th December 1744, 'having considered the disposition by James to Robert, and accepted of by Robert, wheteby, for the reasons therein-mentioned, he specially conveyed to Robert, every subject belonging to him, and particularly his share of stock with the said Robert, in company with George Bogle and John Jamieson; partners in the West-India and Virginia trade; and that for the behoof of the said James's creditors, and of his children, as to the residue: Found, That Robert and James Robertsons, being jointly and severally bound in the debts pursued for, the arrestments proceeding thereon; in the hands of Bogle and Jamieson, the other partners, albeit after the death of James, did no less affect the interest of James than that of Robert in the copartnery; and therefore preferred the arresters.'

THE LORDS refused two reclaiming bills successively, and adhered.

Petitioner, *H. Home.*

Clerk, *Justice.*

*D. Falconer, v. 1. p. 49.*

No 54.

N 55.

One partner of a company named another his executor, and died. Arrestments in the hands of their partners in trade, found to affect the shares both of the deceased and of the executor. See No 52. p. 716.