

In consequence of this letter, Watfon roused part of the goods.

Souper, a creditor of Smith's, who had not been present at the meeting, arrested in the hands of Watfon. This brought on a competition betwixt him and the other creditors.

Pleaded for the creditors, Watfon was trustee for them; he was accountable to them, and not to Smith. There was a *jus quæsitum* to them by Smith's letter; therefore an arrestment in the hands of their trustee was inept.

Answered for Souper, The mandate flowed from Smith; it was revocable by him; it would have fallen by his death: and therefore the arrestment in the hands of the *mandatarius* was an apt diligence.

THE LORDS found, That the goods sold, and the prices thereof received by Watfon, belonged proportionally to the creditors, according to their debts.

A&G. *Hamilton-Gordon.*

Alt. *J. Craigie.*

Clerk, *Kirkpatrick.*

Fol. Dic. v. 3. p. 42. Fac. Col. No 178. p. 266.

J. Dalrymple.

1759. February 9.

ANDREW STALKER, Merchant in Glasgow, against ANDREW AITON,
Merchant there.

In February 1754, John Trotter having carried to Jamaica a cargo of goods, insured them in Stalker's office. The price of insurance amounted to L. 57:12s. Sterling, for which he granted bills on London. The bills were protested for not acceptance.

In July thereafter, Trotter sent a cargo of sugars from Jamaica to Leith, consigned to Aiton at Glasgow, and to Mitchell at Leith. He inclosed the invoices and bills of lading in a letter to Aiton; and desired him, 'when he received the proceeds of the cargo, to discharge certain bills and accounts due by him in Scotland, as far as the proceeds would go.' And to the letter he subjoined a list of the creditors to whom these bills and accounts were due, in which Mr Stalker is set down as one. Mr Aiton was likewise desired to insure the cargo; which he did in his own name.

Before the arrival of the sugars, Mr Stalker, in October 1754, arrested them in the hands of Aiton, as the effects of Trotter, his debtor.

After the arrival of the sugars at Leith, Mr Aiton, in February 1755, made out an account of the proceeds of the cargo, and allotted to each of the creditors a certain share thereof, corresponding to their debts; by which the whole was exhausted, and there remained due to the creditors considerable sums.

All the creditors agreed to accept of this dividend except Stalker; and Aiton granted an obligation to the other creditors to pay them their shares of it.

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person to sell his goods for behoof of his creditors.

The proceeds not arrestable by an individual creditor who was not present at the meeting.

No 77.

Arrestment in the hands of a person to whom goods are consigned being used before the goods come to his possession, not competent.

Goods put into the hands of a trustee, to be sold and applied for behoof of creditors, being sold; arrestment in the trustee's hands, cannot prevent him from making the intended division of the price.

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Before Aiton had paid the other creditors, Stalker executed another arrestment in his hands ; and on both arrestments raised a process of furthcoming.

Pleaded for Aiton, the arrestee, That the first arrestment was inept and ineffectual, as it was laid on in his hands before he was in possession of any of the common debtor's effects.

That the second arrestment was likewise ineffectual, as it was not executed till after Mr Aiton became bound to pay the dividends agreed upon to the other creditors out of the proceeds of the cargo. They had thereby acquired such a right to the proceeds of this cargo, that it could not be affected by Stalker's after arrestment.

Pleaded for Stalker, the arrester, That, at the date of the first arrestment, the arrestee, Mr Aiton, was in the legal and civil possession of the cargo. It was consigned to him ; he had insured it in his own name ; he could have sold it before it arrived, and vested the property of the goods, or of the sum insured, in the purchaser, although he had not then obtained the natural possession of them : these effects therefore being in his possession, were subjected to diligence by arrestment in his hands, and were properly arrested. Thus it was decided, 19th November 1742, in the case *Rae contra Nielson*, No 52. p. 716. that an arrestment laid on in the hands of one copartner, by the creditor of another copartner, was effectual to attach the copartnery goods, although the arrestee was not in the natural possession of them. And in the case, 13th February 1740, *Sir Harry Innes contra the Creditors of Ludovick Gordon*, No 51. p. 715. the LORDS preferred an arrestment laid on in the hands of an indorsee to a bill in trust for the common debtor, to a posterior one laid on in the same hands after the bill was paid, and the money thereby in the indorsee's possession.

2dly, That the arrestee's becoming bound to pay the dividends to the creditors, did not transfer the property of the subjects ; they continued *in bonis* of the common debtor Trotter, subject to be attached by legal diligence. By the commission and consignment, Aiton was desired to pay the proceeds of the cargo to the creditors, only so soon as they were put into his hands. He was not desired, by anticipation, to interpose his own obligation ; by so doing he acted beyond his commission ; and such actings cannot have any effect ; they cannot obstruct or defeat the operation of the second arrestment laid on in the arrestee's hands, while he was in the natural possession of the common debtor's effects, the price of the cargo.

Answered, That the first decision did not apply to the present case. Every copartner is considered as proprietor, and in possession of the whole company-goods, wherever they are situated ; arrestment therefore is properly executed against any of the partners, and will affect the goods of the copartnery ; but goods consigned to a trustee or factor, as in the present case, are not considered to be in his hands until he is in the natural possession of them, and till then they are not arrestable in his hands.

Neither the second decision apply to the present case. For though bills or goods consigned to the behoof of the common debtor may be subjected to the arrestment of his creditors, yet, when they are consigned for payment of certain creditors, the property is so much transferred to those creditors, that the goods are not liable to diligence by arrestment at the instance of other creditors. This was so determined in a case, December 1726, Jamieson *contra* Leckie, No 46. p. 711.

THE LORD KAMES ORDINARY found, That, in October 1754, the date of the pursuer's first arrestment, Andrew Aiton had no such possession of the goods as to make the arrestment in his hands a habile diligence for affecting the same: And with respect to the second arrestment, laid on in Mr Aiton's hands after he became bound to the creditors to divide the proceeds of the cargo amongst them, found, That Mr Aiton was not interpellated, by the said arrestment, from making payment to the creditors in pursuance of his obligation. And the LORDS, on advising a reclaiming petition and answers, adhered to the interlocutor of the Lord Ordinary.

Fol. Dic. v. 3. p. 41. Fac. Col. No 166. p. 295.

1760. November 18.

DAVID CUNINGHAM, Baker in Edinburgh, *against* George Home, Deacon, and Charles Cuningham, Boxmaster of the INCORPORATION of BAKERS there, David Simson, agent, James Frazer and James Dougal, and others, servants to the Members of the Incorporation, in the management of their mills.

THE bakers of Edinburgh were formerly thirled to the mills belonging to that city, for all wheat grinded by them; but finding that servitude inconvenient, they, for payment of an agreed feu-duty, got an irredeemable right to these mills, in favour of their then deacon and boxmaster, and their successors in office, for the use and behoof of the incorporation of bakers, and their successors.

By the regulations established for the management of these mills, it appeared, that the benefit of the feu was intended solely for the utility of the respective members, and not to have any connection with the incorporation funds; and that that benefit was communicated to the widows of such members as carried on trade after their husband's death.

A widow of one of the members of the corporation, having brought some wheat to the mill to be grinded, David Cuningham, her creditor, arrested it, while it was grinding, in the hands of the deacon and boxmaster, clerk, and other servants of the corporation; and afterwards insisted against them in an action of furthcoming.

The deacon and boxmaster *pleaded*, That, as managers of the corporation-funds, they could not be found liable; because the corporation neither had interest in nor possession of these mills. The feu was not granted to the corporation

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No 78.

Arrestment of grain belonging to one of the members of a corporation, used against the managers and servants of that corporation, the grain being in their hands for the purpose of being grinded, found not competent.