

Against Clark's demand upon this bill, the defender *pleaded* compensation upon an account of medicines and attendance, due to her deceased husband, by Clark and his mother. Clark admitted this account, in so far as respected himself; but in so far as it regarded his mother, whom he represented, he *pleaded*, That it was cut off by the triennial prescription. This account alleged due by the mother, commenced in the 1744, and ended in the 1750.

Observed on the Bench; That it was plainly prescribed before there was a mutual concurrence.

THE COURT 'sustained the objection of prescription to the account due by the mother;' and upon a reclaiming bill and answers, 'adhered.'

Act. D. Armstrong.

Alt. Ro. Cullen.

Clerk, Ross.

Fol. Dic. v. 3. p. 150. Fac. Col. No 88. p. 223.

No 132.
the triennial prescription had been run, before the date of the bill with which it was sought to be compensated.

1781. December 11.

ROBERT CAMPBELL of Downie, *against* JAMES CAMPBELL of Silvercraigs.

CAMPBELL of Asknish, and Campbell of Silvercraigs, as trustees for Archibald Campbell of Danna, sold the estate of the last, which was burdened with the payment of certain annuities.

Silvercraigs was himself a creditor of Danna, and prevailed upon the purchaser to pay him, and Asknish, the other trustee, that part of the price which he might have retained as the stock corresponding to the annuities. For this, without mention of their character as trustees, they granted to him a bond, obliging themselves and their heirs to indemnify him for these annuities.

On the death of one of the annuitants, Robert Campbell of Downie, likewise a creditor of Danna, laid arrestments in the hands of Asknish and Silvercraigs, the trustees. In a process of multiplepointing which followed, a competition arose betwixt this arresting creditor and Silvercraigs, who acknowledged, that he was possessed of the whole sum paid to him and Asknish; but *insisted*, That he was entitled to retain the stock of the annuity which had fallen for payment of the debt due to himself; and, in support of this claim,

Pleaded; It is a point *triti juris*, That an arrestee who is likewise a creditor, is entitled to retain payment of his own debt. This privilege obtains in every case; wherein, as in the present, the sum arrested has been lawfully and *bona fide* acquired; Bankton, b. 1. tit. 24. § 35. Nor, on this occasion, can it be precluded by the character of trustee. *Officium nemini debet esse damnosum*. A factor is entitled to a more extensive retention; Erskine, b. 3. tit. 4. § 21.

Answered for the arrester; The sum in question being a deposit in the hands of the trustees, is not a subject of retention; Erskine, b. 3. tit. 4. § 17.

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No 133.
A trustee is not entitled to retention for a debt due to himself.

No 133.

THE COURT adhered to the Lord Ordinary's interlocutor, finding, ' That the sum *in medio* was in Silvercraig's hands merely in the character of one of the trustees of Danna; and that he had no right of retention or preference therein.'

Lord Ordinary, *Monboddo*. For Arrester, *G. Fergusson*. For Trustees, *Rolland*. Clerk, *Menzies*.
S. *Fac. Ct. No 12. p. 24.*

1791. *January 27.*

THE CREDITORS OF HENRY HARPER *against* ANDREW FAULDS.

No 134.
Goods in the hands of an artisan to be manufactured cannot be retained by him for any other debt than that of the expense of his manufacture.

HARPER, a dealer in the linen trade, used to employ Faulds as a bleacher; and at the end of each season accounts were settled between them, for the cloths bleached in the course of it. On one of those occasions Harper granted a bill for L. 105.

In the following season he sent various parcels of linen to this bleachfield, but soon after became bankrupt, his estate being sequestrated, and a trustee chosen over it. The trustee demanded delivery of those goods on payment of the price of bleaching them. This being refused by Faulds, who claimed retention for security of the bill-debt, the trustee brought an action against him, when it was

Pleaded for the defender; One's right of retaining the goods of another, until he shall restore the property of the retainer in his possession, is founded on the first and clearest dictates of justice. It is, however, to be understood, that in the retainer's situation no circumstances have occurred inconsistent with his claim; that his possession is honest and lawful; that he has neither relinquished the claim by express paction; nor is excluded from it by implied compact, as in the cases of deposit and of commodate; nor debarred by any positive law: But if possession has been obtained *hinc inde* in the way of commerce, where, from the nature of the contract, each party is to be entitled to a certain patrimonial benefit, and to make the best advantage he can of his neighbour's property, justice requires that the performance be mutual, while nothing to the contrary is stipulated or implied. And it requires this more especially when, by the insolvency of the party, the denial of retention is the loss of a debt.

Such is the situation of an artist having the goods of other people in his possession for the purpose of manufacture; it being in effect the same, as if he had held that possession for his own benefit, by paying a premium to the owner. This is evident where different artisans have, in that way, mutually each others goods in their custody; in whose case it is clear, at the same time, that there is nothing peculiar.

The above is the doctrine of the Roman law. Without *bonæ fidei* possession, in the case of deposit—or in that of *commodatum*, there existed no right of