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on the same principle, a traveller might be made the arrestee of his post-chaise. But it was not perceived, that, in those instances, the possession, not transferred to the temporary occupier, would still be held by him in the right of the owner.

The Court were of opinion, That pointing was the only proper diligence in this case, though it could not have its full effect before the right of possession expired; but that the temporary infringement of that right, being essential to the form of execution, was to be submitted to.

THE LORDS therefore refused the petition without answers.

Lord Ordinary, *Gardenston.*

For Petitioner, *W. Stewart.*

Alt. *A. Burnet.*

*Fol. Dic. v. 3. p. 42. Fac. Col. No 182. p. 286.*

*Stewart.*

No 86.

Arrestment used in the hands of the owner of an estate under judicial sale, competent to attach the money due to the agent employed in bringing that process.

1784. *December 24.* ROBERT DUNDAS against ALEXANDER ALIFON.

JOHN IRVING was employed by the pursuer as agent in a process of ranking and sale of the estate of David Blair; another person was named factor under the sequestration; and a third appointed common agent in the ranking.

Dundas and Alifon were both creditors of Irving. In order to attach the debt contained in Irving's account, Mr Alifon laid arrestments in the hands of Mr Blair, the proprietor of the estate, and likewise in those of the common agent. Afterwards, Mr Dundas, for the same purpose, used an arrestment against the factor under the sequestration, and obtained an assignation from the common debtor. A competition thus ensued between these two creditors, Mr Alifon claiming preference from his prior arrestments, while Mr Dundas contended, that they were inept, not having been directed against the proper parties; but that his arrestment, as well as his assignation, was effectual, a judicial factor being vested with more ample powers than an ordinary factor or commissioner.

The case was reported to the Court, who considered the proprietor of the estate under sale as the debtor to the agent, and consequently that the arrestment in his hands was the only effectual one. It was observed too, that no distinction could be made between the case of a common, and that of a judicial factor.

THE LORDS therefore preferred Mr Alifon to the sum *in medio.*

Reporter, *Lord Braxfield.*

For Dundas, *Solicitor General.*

For Alifon, *Corbet.*

Clerk, *Orme.*

*Fol. Dic. v. 3. p. 43. Fac. Col. No 191. p. 301.*

*Stewart.*