

brought a multiplepointing, in which a competition ensued betwixt the arresters and the assignee.

No 98.

It was argued for the assignee, That there was no aliment due or payable by the Earl of Caithness at the time when the arrestments were used in his hands; and therefore there was no subject which could be affected by these arrestments: That an aliment was properly due *de die in diem*, though, by the Lords decree, the term of payment be suspended to Martinmas that year; and therefore no more could be affected by the arrestments than what was due at the time they were laid on; 22d December 1676, Dick *contra* Sir Andrew Dick, Dirleton, No 414. p. 202. *voce* PERSONAL and TRANSMISSIBLE.

It was answered for the arresters, That this annuity is no more due *de die in diem*, than the annualrents of bonds or annuities due to a liferenter. By the above judgment, it is not payable *de die in diem*, but at two terms in the year, Whitfunday and Martinmas, by equal portions; that is, at the same terms at which her jointure would have been payable in case of the Earl's death; and therefore this current term was affectable by arrestment, in the same way that a current half year's rent or jointure would be affectable.

The Lords preferred the arresters.

Reporter, Auchinleck. A.C. Bruce. Alt. Walk. Stewart.  
Fol. Dic. v. 3. p. 43. Fac. Col. No 36. p. 71.  
J. Monro.

### Nature and Effect of Arrestment.

1623. December 20. HUME of Goodcroft *against* AIKMAN'S CREDITOR.

No 99.

IN an action of suspension, raised at the instance of Mr David Hume of Goodcroft, against James Aikman's Creditor, which creditor had arrested a sum of money owing by the said Mr David, to the said James Aikman, and was decerned to be made furthcoming for satisfying of a debt owing by the said James, to the said creditor:—THE LORDS found, albeit the bond containing the debt owing by Mr David, to the said James, was an heritable bond, and that he was thereby obliged to pay yearly annual ay and while the re-payment, yet that the said Mr David was not holden to pay annualrent, from the time that it was arrested in his hand, by the said James Aikman's creditor, seeing the arrestment was an probable cause to him, wherefore he could not be *in tuto*, if he had paid the same to his principal creditor, viz. Aikman; neither could he pay the same to the arrester, without a sentence, and so his retention of the sum being necessary to him for his own surety, excused him from annual paying, since the arrestment; and this was found, albeit it was *alleged*, That he ought either to have paid the

An arrestment of a sum contained in an heritable bond, supposed to have the effect of stopping the current of annualrent; so that the debtor could not be liable for it, either to the creditor or the assignee: not finally decided.

No 99. principal sum, or consigned the same ; or else he could not be freed of the annual-rent, being subject thereto by his bond. This cause was ordained thereafter to be further heard, and this interlocutor was stayed.—Here it may be questioned, if sums debtful by heritable bonds be arrestable, which has not been here disputed ; for answer whereto, *see* K. Charles' Parliament, v. 2. p. 250.

*Durie, p. 93.*

1633. February 26. RUTHERFORD and TURNBULL *against* their CREDITORS.

No 100.

Arrestment, used after the debtor's death, is not a habile diligence for affecting his goods ; and gives no preference in competition with creditors who proceed by confirmation, or by pursuing the executors.

ONE Turnbull, relict of Rutherford, being confirmed executrix to her husband, pursuing exoneration against her husband's creditors, by offering of the goods in the testament, to be divided amongst them : The bairns of John Pringle of Cockle-ferrie desiring to be preferred to other creditors compearing, seeing they *alleged*, they had obtained sentence against the relict, for the debt owing to them by the defunct, and that they had arrested in the hands of certain debtors, sums owing by them, to the defunct their debtor, whereby they claimed to be preferred to other creditors, who had done no diligence at all ; notwithstanding whereof, the LORDS refused to give preference to this creditor, and respected not his diligence ; but found that all the rest of his creditors, albeit they had done no diligence, should come in equally with him, in partaking of the goods of the testament, according to the proportion of the debts, seeing the diligence was not respected in this case, where the defunct had died within these nine months, or thereby, last by-past, and where the relict was only confirmed executrix, within these six or seven weeks last by-past ; so that for the shortness of time, there could be no great negligence nor omission imputed to the other creditors.

*Act. Craig & Gibson.*

*Alt. Sandilands.*

*Clerk, Gibson.*

*Fol. Dic. v. 1. p. 58. Durie, p. 678.*

1738. December 22.

EARL of ABERDEEN *against* The other CREDITORS of SCOT of Blair.

No 101.

Arrestment found not to fall by the death of the person in whose hands it is laid.

THE LORDS, after a hearing in presence, found, That an arrestment does not fall by the death of the person in whose hands it was laid, but may be made effectual against his heir by a furthcoming, where the subject is *in medio* ; and therefore the subject in this case being *in medio*, preferred the Earl's arrestment laid in the hands of the defunct, to an arrestment used by his competitors against the heir.

This was new, and till it shall be followed by another judgment, cannot be called a settled point.

*Fol. Dic. v. 1. p. 58. Kilkerran, (ARRESTMENT.) No 1. p. 35.*